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SENATE

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DECLARATION OF INTERNATIONAL NAVAL CONFERENCE

SIGNED BY THE DELEGATES OF THE UNITED STATES TO THE INTERNATIONAL NAVAL CONFERENCE HELD AT LONDON, ENGLAND, FROM DECEMBER 4, 1908, TO FEBRUARY 26, 1909

TOGETHER WITH AN

OPINION OF HON. CONE JOHNSON, SOLICITOR FOR THE STATE DEPARTMENT, RELATIVE TO THE TRANSFER OF MERCHANT SHIPS DURING WAR

PRESENTED BY MR. O'GORMAN AND MR. SIMMONS

AUGUST 11, 1914.—Ordered to be printed

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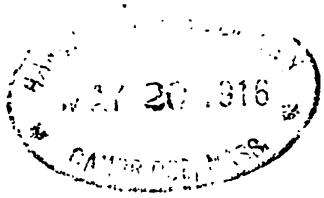

U S Government

Executive A. Sixty-first Congress, first session.

MESSAGE

FROM THE

PRESIDENT OF THE UNITED STATES,

TRANSMITTING

THE DECLARATION SIGNED BY THE DELEGATES OF THE UNITED STATES TO THE INTERNATIONAL NAVAL CONFERENCE, HELD AT LONDON, ENGLAND, FROM DECEMBER 4, 1908, TO FEBRUARY 26, 1909.

APRIL 21, 1909.—Read; convention read the first time and referred to the Committee on Foreign Relations and, together with the message and accompanying papers, ordered to be printed in confidence for the use of the Senate.

DECEMBER 13, 1909.—Injunction of secrecy removed.

APRIL 28, 1911.—Recommitted.

To the Senate:

I transmit, with a view to receiving the advice and consent of the Senate to ratification, the declaration signed by the delegates of the United States to the International Naval Conference, held at London, England, from December 4, 1908, to February 26, 1909, together with a report by the Secretary of State and other accompanying papers.

WM. H. TAFT.

THE WHITE HOUSE, *April 21, 1909.*

The PRESIDENT:

I have the honor to submit for your consideration and for transmission to the Senate, should you deem it proper, with a view to obtaining the advice and consent of that body to ratification, an authenticated copy of the declaration concerning laws of naval warfare, signed on February 26, 1909, by the delegates of the United States and other powers to the International Naval Conference, held at London, England, from December 4, 1908, to February 26, 1909, together with an official interpretation of such declaration by the committee which drafted it.

I further submit for the information of the Senate a copy of the final protocol of the conference, and the following documents, as relevant and material to the consideration of the declaration:

1. The programme of the conference as outlined in the note dated March 27, 1908, from the British embassy to the Department of State, inviting the participation of the United States in the conference;
2. The instructions to the American delegates; and
3. The report by the American delegates of the proceedings of the conference and their participation therein.

Respectfully submitted.

P. C. KNOX.

DEPARTMENT OF STATE,
Washington, April 12, 1909.

[Translation.]

[The Declaration was signed in the French Language only.]

DECLARATION CONCERNING THE LAWS OF NAVAL WARFARE.

HIS Majesty the German Emperor, King of Prussia; the President of the United States of America; His Majesty the Emperor of Austria, King of Bohemia, &c., and Apostolic King of Hungary; His Majesty the King of Spain; the President of the French Republic; His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India; His Majesty the King of Italy; His Majesty the Emperor of Japan; Her Majesty the Queen of the Netherlands; His Majesty the Emperor of All the Russias.

Having regard to the terms in which the British Government invited various Powers to meet in conference in order to arrive at an agreement as to what are the generally recognized rules of international law within the meaning of Article 7 of the Convention of 18th October, 1907, relative to the establishment of an International Prize Court;

Recognizing all the advantages which an agreement as to the said rules would, in the unfortunate event of a naval war, present, both as regards peaceful commerce, and as regards the belligerents and their diplomatic relations with neutral Governments;

Having regard to the divergence often found in the methods by which it is sought to apply in practice the general principles of international law;

Animated by the desire to insure henceforward a greater measure of uniformity in this respect;

Hoping that a work so important to the common welfare will meet with general approval;

Have appointed as their Plenipotentiaries, that is to say:

His Majesty the German Emperor, King of Prussia:

M. Kriege, Privy Councillor of Legation and Legal Adviser to the Department for Foreign Affairs, Member of the Permanent Court of Arbitration.

The President of the United States of America:

Rear-Admiral Charles H. Stockton, retired;

Mr. George Grafton Wilson, Professor at Brown University and Lecturer on International Law at the Naval War College and at Harvard University.

His Majesty the Emperor of Austria, King of Bohemia, &c., and Apostolic King of Hungary:

His Excellency M. Constantin Thoédore Dumba, Privy Councillor of His Imperial and Royal Apostolic Majesty, Envoy Extraordinary and Minister Plenipotentiary.

His Majesty the King of Spain:

M. Gabriel Maura y Gamazo, Count de la Mortera, Member of Parliament.

The President of the French Republic:

M. Louis Renault, Professor of the Faculty of Law at Paris, Honorary Minister Plenipotentiary, Legal Adviser to the Ministry of Foreign Affairs, Member of the Institute of France, Member of the Permanent Court of Arbitration.

His Majesty the King of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, Emperor of India:

The Earl of Desart, K. C. B., King's Proctor.

His Majesty the King of Italy:

M. Guido Fusinato, Councillor of State, Member of Parliament, ex-Minister of Public Instruction, Member of the Permanent Court of Arbitration.

His Majesty the Emperor of Japan:

Baron Toshiatsu Sakamoto, Vice-Admiral, Head of the Department of Naval Instruction.

M. Enjiro Yamaza, Councillor of the Imperial Embassy at London.

Her Majesty the Queen of the Netherlands:

His Excellency Jonkheer J. A. Roell, Aide-de-Camp to Her Majesty the Queen in Extraordinary Service, Vice-Admiral retired, ex-Minister of Marine.

Jonkheer L. H. Ruyssenaers, Envoy Extraordinary and Minister Plenipotentiary, ex-Secretary-General of the Permament Court of Arbitration.

His Majesty the Emperor of all the Russias:

Baron Taube, Doctor of Laws, Councillor to the Imperial Ministry of Foreign Affairs, Professor of International Law at the University of St. Petersburgh.

Who, after having communicated their full powers, found to be in good and due form, have agreed to make the present Declaration:—

Preliminary Provision.

The Signatory Powers are agreed that the rules contained in the following Chapters correspond in substance with the generally recognized principles of international law.

Chapter I. Blockade in time of war.

Article 1.

A blockade must not extend beyond the ports and coasts belonging to or occupied by the enemy.

Article 2.

In accordance with the Declaration of Paris of 1856, a blockade, in order to be binding, must be effective,—that is to say, it must be maintained by a force sufficient really to prevent access to the enemy coastline.

Article 3.

The question whether a blockade is effective is a question of fact.

Article 4.

A blockade is not regarded as raised if the blockading force is temporarily withdrawn on account of stress of weather.

Article 5.

A blockade must be applied impartially to the ships of all nations.

Article 6.

The Commander of a blockading force may give permission

to a warship to enter, and subsequently to leave, a blockaded port.

ARTICLE 7.

In circumstances of distress, acknowledged by an officer of the blockading force, a neutral vessel may enter a place under blockade and subsequently leave it, provided that she has neither discharged nor shipped any cargo there.

ARTICLE 8.

A blockade, in order to be binding, must be declared in accordance with Article 9, and notified in accordance with Articles 11 and 16.

ARTICLE 9.

A declaration of blockade is made either by the blockading Power or by the naval authorities acting in its name.

It specifies—

(1) The date when the blockade begins;

(2) The geographical limits of the coastline under blockade;

(3) The period within which neutral vessels may come out.

ARTICLE 10.

If the operations of the blockading Power, or of the naval authorities acting in its name, do not tally with the particulars, which, in accordance with Article 9 (1) and (2), must be inserted in the declaration of blockade, the declaration is void, and a new declaration is necessary in order to make the blockade operative.

ARTICLE 11.

A declaration of blockade is notified—

(1) To neutral Powers, by the blockading Power by means of a communication addressed to the Governments direct, or to their representatives accredited to it;

(2) To the local authorities, by the officer commanding the blockading force. The local authorities will, in turn, inform the foreign consular officers at the port or on the coastline under blockade as soon as possible.

ARTICLE 12.

The rules as to declaration and notification of blockade apply to cases where the limits of a blockade are extended, or where a blockade is re-established after having been raised.

ARTICLE 13.

The voluntary raising of a blockade, as also any restriction in the limits of a blockade, must be notified in the manner prescribed by Article 11.

ARTICLE 14.

The liability of a neutral vessel to capture for breach of blockade is contingent on her knowledge, actual or presumptive, of the blockade.

ARTICLE 15.

Failing proof to the contrary, knowledge of the blockade is presumed if the vessel left a neutral port subsequently to the notification of the blockade to the Power to which such port belongs, provided that such notification was made in sufficient time.

ARTICLE 16.

If a vessel approaching a blockaded port has no knowledge, actual or presumptive, of the blockade, the notification must be made to the vessel itself by an officer of one of the ships of the blockading force. This notification should be entered in the vessel's logbook, and must state the day and hour, and the geographical position of the vessel at the time.

If, through the negligence of the officer commanding the blockading force, no declaration of blockade has been notified to the local authorities, or, if in the declaration, as notified, no period has been mentioned within which neutral vessels may come out, a neutral vessel coming out of the blockaded port must be allowed to pass free.

ARTICLE 17.

Neutral vessels may not be captured for breach of blockade except within the area of operations of the warships detailed to render the blockade effective.

ARTICLE 18.

The blockading forces must not bar access to neutral ports or coasts.

ARTICLE 19.

Whatever may be the ulterior destination of a vessel or of her cargo, she cannot be captured for breach of blockade, if, at the moment, she is on her way to a non-blockaded port.

ARTICLE 20.

A vessel which has broken blockade outwards, or which has attempted to break blockade inwards, is liable to capture so long as she is pursued by a ship of the blockading force. If the pursuit is abandoned, or if the blockade is raised, her capture can no longer be effected.

ARTICLE 21.

A vessel found guilty of breach of blockade is liable to condemnation. The cargo is also condemned, unless it is proved that at the time of the shipment of the goods the shipper neither knew nor could have known of the intention to break the blockade.

CHAPTER II.—CONTRABAND OF WAR.

ARTICLE 22.

The following articles may, without notice,[1] be treated as contraband of war, under the name of absolute contraband:—

(1) Arms of all kinds, including arms for sporting purposes, and their distinctive component parts.

(2) Projectiles, charges, and cartridges of all kinds, and their distinctive component parts.

(3) Powder and explosives specially prepared for use in war.

(4) Gun-mountings, limber boxes, limbers, military waggons, field forges, and their distinctive component parts.

(5) Clothing and equipment of a distinctively military character.

(6) All kinds of harness of a distinctively military character.

(7) Saddle, draught, and pack animals suitable for use in war.

(8) Articles of camp equipment, and their distinctive component parts.

(9) Armour plates.

(10) Warships, including boats, and their distinctive component parts of such a nature that they can only be used on a vessel of war.

(11) Implements and apparatus designed exclusively for the manufacture of munitions of war, for the manufacture or repair of arms, or war material for use on land or sea.

[1] In view of the difficulty of finding an exact equivalent in English for the expression "de plein druit", it has been decided to translate it by the words "without notice", which represent the meaning attached to it by the draftsman as appears from the General Report (see p. 44.)

ARTICLE 23.

Articles exclusively used for war may be added to the list of absolute contraband by a declaration, which must be notified.

Such notification must be addressed to the Governments of other Powers, or to their representatives accredited to the Power making the declaration. A notification made after the outbreak of hostilities is addressed only to neutral Powers.

ARTICLE 24.

The following articles, susceptible of use in war as well as for purposes of peace, may, without notice,[1] be treated as contraband of war, under the name of conditional contraband:—

(1) Foodstuffs.

(2) Forage and grain, suitable for feeding animals.

(3) Clothing, fabrics for clothing, and boots and shoes, suitable for use in war.

(4) Gold and silver in coin or bullion; paper money.

(5) Vehicles of all kinds available for use in war, and their component parts.

(6) Vessels, craft, and boats of all kinds; floating docks, parts of docks and their component parts.

(7) Railway material, both fixed and rolling-stock, and material for telegraphs, wireless telegraphs, and telephones.

(8) Balloons and flying machines and their distinctive component parts, together with accessories and articles recognizable as intended for use in connection with balloons and flying machines.

(9) Fuel; lubricants.

(10) Powder and explosives not specially prepared for use in war.

(11) Barbed wire and implements for fixing and cutting the same.

(12) Horseshoes and shoeing materials.

(13) Harness and saddlery.

(14) Field Glasses, telescopes, chronometers, and all kinds of nautical instruments.

ARTICLE 25.

Articles susceptible of use in war as well as for purposes of peace, other than those enumerated in Articles 22 and 24,

[1] See note on Article 22.

may be added to the list of conditional contraband by a declaration, which must be notified in the manner provided for in the second paragraph of Article 23.

ARTICLE 26.

If a Power waives, so far as it is concerned, the right to treat as contraband of war an article comprised in any of the classes enumerated in Articles 22 and 24, such intention shall be announced by a declaration, which must be notified in the manner provided for in the second paragraph of Article 23.

ARTICLE 27.

Articles which are not susceptible of use in war may not be declared contraband of war.

ARTICLE 28.

The following may not be declared contraband of war:—

(1) Raw cotton, wool, silk, jute, flax, hemp, and other raw materials of the textile industries, and yarns of the same.

(2) Oil seeds and nuts; copra.

(3) Rubber, resins, gums, and lacs; hops.

(4) Raw hides and horns, bones and ivory.

(5) Natural and artificial manures, including nitrates and phosphates for agricultural purposes.

(6) Metallic ores.

(7) Earths, clays, lime, chalk, stone, including marble, bricks, slates, and tiles.

(8) Chinaware and glass.

(9) Paper and paper-making materials.

(10) Soap, paint and colours, including articles exclusively used in their manufacture, and varnish.

(11) Bleaching powder, soda ash, caustic soda, salt cake, ammonia, sulphate of ammonia, and sulphate of copper.

(12) Agricultural, mining, textile, and printing machinery.

(13) Precious and semi-precious stones, pearls, mother-of-pearl, and coral.

(14) Clocks and watches, other than chronometers.

(15) Fashion and fancy goods.

(16) Feathers of all kinds, hairs, and bristles.

(17) Articles of household furniture and decoration; office furniture and requisites.

ARTICLE 29.

Likewise the following may not be treated as contraband of war:

(1) Articles serving exclusively to aid the sick and wounded. They can, however, in case of urgent military necessity and subject to the payment of compensation, be requisitioned, if their destination is that specified in Article 30.

(2) Articles intended for the use of the vessel in which they are found, as well as those intended for the use of her crew and passengers during the voyage.

ARTICLE 30.

Absolute contraband is liable to capture if it is shown to be destined to territory belonging to or occupied by the enemy, or to the armed forces of the enemy. It is immaterial whether the carriage of the goods is direct or entails transhipment or a subsequent transport by land.

ARTICLE 31.

Proof of the destination specified in Article 30 is complete in the following cases:—

(1) When the goods are documented for discharge in an enemy port, or for delivery to the armed forces of the enemy.

(2) When the vessel is to call at enemy ports only, or when she is to touch at an enemy port or meet the armed forces of the enemy before reaching the neutral port for which the goods in question are documented.

ARTICLE 32.

Where a vessel is carrying absolute contraband, her papers are conclusive proof as to the voyage on which she is engaged, unless she is found clearly out of the course indicated by her papers and unable to give adequate reasons to justify such deviation.

ARTICLE 33.

Conditional contraband is liable to capture if it is shown to be destined for the use of the armed forces or of a government department of the enemy State, unless in this latter case the circumstances show that the goods cannot in fact be used for the purposes of the war in progress. This latter exception does not apply to a consignment coming under Article 24 (4).

ARTICLE 34.

The destination referred to in Article 33 is presumed to exist if the goods are consigned to enemy authorities, or to a contractor established in the enemy country who, as a matter of common knowledge, supplies articles of this kind to the enemy. A similar presumption arises if the goods are consigned to a fortified place belonging to the enemy, or other place serving as a base for the armed forces of the enemy. No such presumption, however, arises in the case of a merchant vessel bound for one of these places if it is sought to prove that she herself is contraband.

In cases where the above presumptions do not arise, the destination is presumed to be innocent.

The presumptions set up by this Article may be rebutted.

ARTICLE 35.

Conditional contraband is not liable to capture, except when found on board a vessel bound for territory belonging to or occupied by the enemy, or for the armed forces of the enemy, and when it is not to be discharged in an intervening neutral port.

The ship's papers are conclusive proof both as to the voyage on which the vessel is engaged and as to the port of discharge of the goods, unless she is found clearly out of the course indicated by her papers, and unable to give adequate reasons to justify such deviation.

ARTICLE 36.

Notwithstanding the provisions of Article 35, conditional contraband, if shown to have the destination referred to in Article 33, is liable to capture in cases where the enemy country has no seaboard.

ARTICLE 37.

A vessel carrying goods liable to capture as absolute or conditional contraband may be captured on the high seas or in the territorial waters of the belligerents throughout the whole of her voyage, even if she is to touch at a port of call before reaching the hostile destination.

ARTICLE 38.

A vessel may not be captured on the ground that she has carried contraband on a previous occasion if such carriage is in point of fact at an end.

ARTICLE 39.

Contraband goods are liable to condemnation.

ARTICLE 40.

A vessel carrying contraband may be condemned if the contraband, reckoned either by value, weight, volume, or freight, forms more than half the cargo.

ARTICLE 41.

If a vessel carrying contraband is released, she may be condemned to pay the costs and expenses incurred by the captor in respect of the proceedings in the national prize court and the custody of the ship and cargo during the proceedings.

ARTICLE 42.

Goods which belong to the owner of the contraband and are on board the same vessel are liable to condemnation.

ARTICLE 43.

If a vessel is encountered at sea while unaware of the outbreak of hostilities or of the declaration of contraband which applies to her cargo, the contraband cannot be condemned except on payment of compensation; the vessel herself and the remainder of the cargo are not liable to condemnation or to the costs and expenses referred to in Article 41. The same rule applies if the master, after becoming aware of the outbreak of hostilities, or of the declaration of contraband, has had no opportunity of discharging the contraband.

A vessel is deemed to be aware of the existence of a state of war, or of a declaration of contraband, if she left a neutral port subsequently to the notification to the Power to which such port belongs of the outbreak of hostilities or of the declaration of contraband respectively, provided that such notification was made in sufficient time. A vessel is also deemed to be aware of the existence of a state of war if she left an enemy port after the outbreak of hostilities.

ARTICLE 44.

A vessel which has been stopped on the ground that she is carrying contraband, and which is not liable to condemnation on

account of the proportion of contraband on board, may, when the circumstances permit, be allowed to continue her voyage if the master is willing to hand over the contraband to the belligerent warship.

The delivery of the contraband must be entered by the captor on the logbook of the vessel stopped, and the master must give the captor duly certified copies of all relevant papers.

The captor is at liberty to destroy the contraband that has been handed over to him under these conditions.

CHAPTER III.—UNNEUTRAL SERVICE.

ARTICLE 45.

A neutral vessel will be condemned and will, in a general way, receive the same treatment as a neutral vessel liable to condemnation for carriage of contraband:—

(1) If she is on a voyage specially undertaken with a view to the transport of individual passengers who are embodied in the armed forces of the enemy, or with a view to the transmission of intelligence in the interest of the enemy.

(2) If, to the knowledge of either the owner, the charterer, or the master, she is transporting a military detachment of the enemy, or one or more persons who, in the course of the voyage, directly assist the operations of the enemy.

In the cases specified under the above heads, goods belonging to the owner of the vessel are likewise liable to condemnation.

The provisions of the present Article do not apply if the vessel is encountered at sea while unaware of the outbreak of hostilities, or if the master, after becoming aware of the outbreak of hostilities, has had no opportunity of disembarking the passengers. The vessel is deemed to be aware of the existence of a state of war if she left an enemy port subsequently to the outbreak of hostilities, or a neutral port subsequently to the notification of the outbreak of hostilities to the Power to which such port belongs, provided that such notification was made in sufficient time.

ARTICLE 46.

A neutral vessel will be condemned and, in a general way, receive the same treatment as would be applicable to her if she were an enemy merchant vessel.

(1) If she takes a direct part in the hostilities;

(2) If she is under the orders or control of an agent placed on board by the enemy Government;

(3) If she is in the exclusive employment of the enemy Government;

(4) If she is exclusively engaged at the time either in the transport of enemy troops or in the transmission of intelligence in the interest of the enemy.

In the cases covered by the present Article, goods belonging to the owner of the vessel are likewise liable to condemnation.

ARTICLE 47.

Any individual embodied in the armed forces of the enemy who is found on board a neutral merchant vessel, may be made a prisoner of war, even though there be no ground for the capture of the vessel.

CHAPTER IV.—DESTRUCTION OF NEUTRAL PRIZES.

ARTICLE 48.

A neutral vessel which has been captured may not be destroyed by the captor; she must be taken into such port as is proper for the determination there of all questions concerning the validity of the capture.

ARTICLE 49.

As an exception, a neutral vessel which has been captured by a belligerent warship, and which would be liable to condemnation, may be destroyed if the observance of Article 48 would involve danger to the safety of the warship or to the success of the operations in which she is engaged at the time.

ARTICLE 50.

Before the vessel is destroyed all persons on board must be placed in safety, and all the ship's papers and other documents which the parties interested consider relevant for the purpose of deciding on the validity of the capture must be taken on board the warship.

ARTICLE 51.

A captor who has destroyed a neutral vessel must, prior to any decision respecting the validity of the prize, establish that he only acted in the face of an exceptional necessity of the nature contemplated in Article 49. If he fails to do this, he must com-

pensate the parties interested and no examination shall be made of the question whether the capture was valid or not.

ARTICLE 52.

If the capture of a neutral vessel is subsequently held to be invalid, though the act of destruction has been held to have been justifiable, the captor must pay compensation to the parties interested, in place of the restitution to which they would have been entitled.

ARTICLE 53.

If neutral goods not liable to condemnation have been destroyed with the vessel, the owner of such goods is entitled to compensation.

ARTICLE 54.

The captor has the right to demand the handing over, or to proceed himself to the destruction of, any goods liable to condemnation found on board a vessel not herself liable to condemnation, provided that the circumstances are such as would, under Article 49, justify the destruction of a vessel herself liable to condemnation. The captor must enter the goods surrendered or destroyed in the logbook of the vessel stopped, and must obtain duly certified copies of all relevant papers. When the goods have been handed over or destroyed, and the formalities duly carried out, the master must be allowed to continue his voyage.

The provisions of Articles 51 and 52 respecting the obligations of a captor who has destroyed a neutral vessel are applicable.

CHAPTER V. TRANSFER TO A NEUTRAL FLAG.

ARTICLE 55.

The transfer of an enemy vessel to a neutral flag, effected before the outbreak of hostilities, is valid, unless it is proved that such transfer was made in order to evade the consequences to which an enemy vessel, as such, is exposed. There is, however, a presumption, if the bill of sale is not on board a vessel which has lost her belligerent nationality less than sixty days before the outbreak of hostilities, that the transfer is void. This presumption may be rebutted.

Where the transfer was effected more than thirty days before the outbreak of hostilities, there is an absolute presumption that it is valid if it is unconditional, complete, and in conformity with the laws of the countries concerned, and if its effect is such that

neither the control of, nor the profits arising from the employment of, the vessel remain in the same hands as before the transfer. If, however, the vessel lost her belligerent nationality less than sixty days before the outbreak of hostilities and if the bill of sale is not on board, the capture of the vessel gives no right to damages.

ARTICLE 56.

The transfer of an enemy vessel to a neutral flag effected after the outbreak of hostilities, is void unless it is proved that such transfer was not made in order to evade the consequences to which an enemy vessel, as such, is exposed.

There, however, is an absolute presumption that a transfer is void:

(1) If the transfer has been made during a voyage or in a blockaded port.

(2) If a right to repurchase or recover the vessel is reserved to the vendor.

(3) If the requirements of the municipal law governing the right to fly the flag under which the vessel is sailing, have not been fulfilled.

CHAPTER VI.—ENEMY CHARACTER.

ARTICLE 57.

Subject to the provisions respecting transfer to another flag, the neutral or enemy character of a vessel is determined by the flag which she is entitled to fly.

The case where a neutral vessel is engaged in a trade which is closed in time of peace, remains outside the scope of, and is in no wise affected by, this rule.

ARTICLE 58.

The neutral or enemy character of goods found on board an enemy vessel is determined by the neutral or enemy character of the owner.

ARTICLE 59.

In the absence of proof of the neutral character of goods found on board an enemy vessel, they are presumed to be enemy goods.

ARTICLE 60.

Enemy goods on board an enemy vessel retain their enemy character until they reach their destination, notwithstanding any

transfer effected after the outbreak of hostilities while the goods are being forwarded.

If, however, prior to the capture, a former neutral owner exercises, on the bankruptcy of an existing enemy owner, a recognized legal right to recover the goods, they regain their neutral character.

CHAPTER VII.—CONVOY.

ARTICLE 61.

Neutral vessels under national convoy are exempt from search. The commander of a convoy gives, in writing, at the request of the commander of a belligerent warship, all information as to the character of the vessels and their cargoes, which could be obtained by search.

ARTICLE 62.

If the commander of the belligerent warship has reason to suspect that the confidence of the commander of the convoy has been abused, he communicates his suspicions to him. In such a case it is for the commander of the convoy alone to investigate the matter. He must record the result of such investigation in a report, of which a copy is handed to the officer of the warship. If, in the opinion of the commander of the convoy, the facts shown in the report justify the capture of one or more vessels, the protection of the convoy must be withdrawn from such vessels.

CHAPTER VIII.—RESISTANCE TO SEARCH.

ARTICLE 63.

Forcible resistance to the legitimate exercise of the right of stoppage, search, and capture, involves in all cases the condemnation of the vessel. The cargo is liable to the same treatment as the cargo of an enemy vessel. Goods belonging to the master or owner of the vessel are treated as enemy goods.

CHAPTER IX.—COMPENSATION.

ARTICLE 64.

If the capture of a vessel or of goods is not upheld by the prize court, or if the prize is released without any judgment being given, the parties interested have the right to compensation, unless there were good reasons for capturing the vessel or goods.

Final Provisions.

Article 65.

The provisions of the present Declaration must be treated as a whole, and cannot be separated.

Article 66.

The Signatory Powers undertake to insure the mutual observance of the rules contained in the present Declaration in any war in which all the belligerents are parties thereto. They will therefore issue the necessary instructions to their authorities and to their armed forces, and will take such measures as may be required in order to insure that it will be applied by their courts, and more particularly by their prize courts.

Article 67.

The present Declaration shall be ratified as soon as possible.

The ratifications shall be deposited in London.

The first deposit of ratifications shall be recorded in a Protocol signed by the Representatives of the Powers taking part therein, and by His Britannic Majesty's Principal Secretary of State for Foreign Affairs.

The subsequent deposits of ratifications shall be made by means of a written notification addressed to the British Government, and accompanied by the instrument of ratification.

A duly certified copy of the Protocol relating to the first deposit of ratifications, and of the notifications mentioned in the preceding paragraph as well as of the instruments of ratification which accompany them, shall be immediately sent by the British Government, through the diplomatic channel, to the Signatory Powers. The said Government shall, in the cases contemplated in the preceding paragraph, inform them at the same time of the date on which it received the notification.

Article 68.

The present Declaration shall take effect, in the case of the Powers which were parties to the first deposit of ratifications, sixty days after the date of the Protocol recording such deposit, and, in the case of the Powers which shall ratify subsequently, sixty days after the notification of their ratification shall have been received by the British Government.

ARTICLE 69.

In the event of one of the Signatory Powers wishing to denounce the present Declaration, such denunciation can only be made to take effect at the end of a period of twelve years, beginning sixty days after the first deposit of ratifications, and, after that time, at the end of successive periods of six years, of which the first will begin at the end of the period of twelve years.

Such denunciation must be notified in writing, at least one year in advance, to the British Government, which shall inform all the other Powers.

It will only operate in respect of the denouncing Power.

ARTICLE 70.

The Powers represented at the London Naval Conference attach particular importance to the general recognition of the rules which they have adopted, and therefore express the hope that the Powers which were not represented there will accede to the present Declaration. They request the British Government to invite them to do so.

A Power which desires to accede shall notify its intention in writing to the British Government, and transmit simultaneously the act of accession, which will be deposited in the archives of the said Government.

The said Government shall forthwith transmit to all the other Powers a duly certified copy of the notification, together with the act of accession, and communicate the date on which such notification was received. The accession takes effect sixty days after such date.

In respect of all matters concerning this Declaration, acceding Powers shall be on the same footing as the Signatory Powers.

ARTICLE 71.

The present Declaration, which bears the date of the 26th February, 1909, may be signed in London up till the 30th June, 1909, by the Plenipotentiaries of the Powers represented at the Naval Conference.

In faith whereof the Plenipotentiaries have signed the present Declaration, and have thereto affixed their seals.

Done at London, the twenty-sixth day of February, one thousand nine hundred and nine, in a single original, which shall remain deposited in the archives of the British Government, and of which duly certified copies shall be sent through the diplomatic channel to the Powers represented at the Naval Conference.

(Here follow the signatures.)

List of signatures appended to the Declaration of February 26, 1909, up to March 20, 1909.

For Germany:	KRIEGE.
For the United States of America:	C. H. STOCKTON. GEORGE GRAFTON WILSON.
For Austria-Hungary:	C. DUMBA.
For France:	L. RENAULT.
For Great Britain:	DESART.
For the Netherlands:	J. A. ROELL. L. H. RUYSSENAERS.

No. 18.

GENERAL REPORT PRESENTED TO THE NAVAL CONFERENCE ON BEHALF OF ITS DRAFTING COMMITTEE.[1]

[Translation.] [2]

On the 27th February, 1908, the British Government addressed a circular to various powers inviting them to meet at a conference with the object of reaching an agreement as to the definition of the generally recognized principles of international law in the sense of article 7, paragraph 2, of the convention signed at The Hague on the 18th October, 1907, for the establishment of an international prize court. This agreement appeared necessary to the British Government on account of certain divergences of view which had become apparent at the second peace conference in connection with the settlement of various important questions of international maritime law in time of war. The existence of these divergent views might, it seemed, render difficult the acceptance of the international prize court, as the power of this court would be the more extended in proportion as the rules to be applied by it were more uncertain.

The British Government suggested that the following questions might form the program of the proposed conference, and invited the powers to express their views regarding them in preparatory memoranda:

(*a*) Contraband, including the circumstances under which particular articles can be considered as contraband; the penalties for their carriage; the immunity of a ship from search when under convoy; and the rules with regard to compensation where vessels have been seized, but have been found in fact only to be carrying innocent cargo.

(*b*) Blockade, including the questions as to the locality where seizure can be effected, and the notice that is necessary before a ship can be seized.

(*c*) The doctrine of continuous voyage in respect both of contraband and of blockade.

(*d*) The legality of the destruction of neutral vessels prior to their condemnation by a prize court.

(*e*) The rules as to neutral ships or persons rendering "unneutral service" ("assistance hostile").

(*f*) The legality of the conversion of a merchant vessel into a warship on the high seas.

(*g*) The rules as to the transfer of merchant vessels from a belligerent to a neutral flag during or in contemplation of hostilities.

(*h*) The question whether the nationality or the domicile of the owner should be adopted as the dominant factor in deciding whether property is enemy property.

The invitations were accepted, and the conference met on the 4th December last. The British Government had been so good as to

[1] This committee consists of Messrs. Kriege (Germany), Wilson (United States of America), Dumba (Austria-Hungary), Estrada (Spain), Renault (France), Reporter, Hurst (Great Britain), Ricci-Busatti (Italy), Sakamoto (Japan), Ruyssenaers (Netherlands), Baron Taube (Russia).

[2] For the original French text of the report see Parliamentary Paper "Miscellaneous No. 5 (1909)," p. 342.

assist its deliberations by presenting a collection of papers which quickly became known among us by the name of the Red Book, and which, after a short introduction, contains a "statement of the views expressed by the powers in their memoranda, and observations intended to serve as a basis for the deliberations of the conference." These are the "bases of discussion" which served as a starting point for the examination of the chief questions of existing international maritime law. The conference could not but express its gratitude for this valuable preparatory work, which was of great assistance to it. It made it possible to observe, in the first place, that the divergences in the practices and doctrines of the different countries were perhaps less wide than was generally believed, that the essential ideas were often the same in all countries, and that the methods of application alone varied with traditions or prejudices, with permanent or accidental interests. It was therefore possible to extract a common element which it could be agreed to recommend for uniform application. This is the end to which the efforts of the different delegations tended, and they vied with one another in their zeal in the search for the grounds of a common understanding. Their efforts were strenuous, as is shown by the prolonged discussions of the conference, the grand committee, and the examining committees, and by the numerous proposals which were presented. Sailors, diplomatists, and jurists cordially cooperated in a work the description of which, rather than a final estimate of its essential value, is the object of this report, as our impartiality might naturally be suspected.

The body of rules contained in the declaration, which is the result of the deliberations of the naval conference, and which is to be entitled "Declaration Concerning the Laws of Naval War," answers well to the desire expressed by the British Government in its invitation of February, 1908. The questions in the program are all settled except two, with regard to which explanations will be given later. The solutions have been extracted from the various views or practices which prevail and represent what may be called the media sententia. They are not always in absolute agreement with the views peculiar to each country, but they shock the essential ideas of none. They must not be examined separately, but as a whole; otherwise there is a risk of the most serious misunderstandings. In fact, if one or more isolated rules are examined either from the belligerent or the neutral point of view, the reader may find that the interests with which he is especially concerned are jeopardized by the adoption of these rules. But they have another side. The work is one of compromise and mutual concessions. Is it, as a whole, a good one?

We confidently hope that those who study it seriously will answer that it is. The declaration puts uniformity and certainty in the place of the diversity and obscurity from which international relations have too long suffered. The conference has tried to reconcile in an equitable and practical way the rights of belligerents with those of neutral commerce; it consists of powers whose conditions, from the political, economic, and geographical points of view, vary considerably. There is therefore reason to suppose that the rules on which these powers have agreed take sufficient account of the different interests involved, and hence may be accepted without objection by all the others.

The preamble of the declaration summarizes the general ideas just set forth.

Having regard to the terms in which the British Government invited various powers to meet in conference in order to arrive at an agreement as to what are the generally recognized rules of international law within the meaning of article 7 of the convention of the 18th October, 1907, relative to the establishment of an international prize court.

Recognizing all the advantages which an agreement as to the said rules would present in the unfortunate event of a naval war, both as regards peaceful commerce, and as regards the belligerents and their diplomatic relations with neutral governments.

Having regard to the divergence often found in the methods by which it is sought to apply in practice the general principles of international law.

Animated by the desire to insure henceforward a greater measure of uniformity in this respect.

Hoping that a work so important to the common welfare will meet with general approval.

What is the scope of application of the rules thus laid down? They must be observed in the relations between the signatory parties, since those parties acknowledge them as principles of recognized international law and, besides, expressly bind themselves to secure the benefit of them for one another. The signatory powers who are or will be parties to the convention establishing the international prize court will have, besides, an opportunity of having these rules applied to disputes in which they are concerned, whether the court regards them as generally recognized rules, or takes account of the pledge given to observe them. It is moreover to be hoped that these rules will before long be accepted by the majority of States, who will recognize the advantage of substituting exact provisions for more or less indefinite usages which tend to give rise to controversy.

It has been said above that two points in the program of the conference were not decided.

(1) The program mentions under head (*f*): The legality of the conversion of a merchant vessel into a warship on the high seas. The conflicting views on this subject which became apparent at the conference of The Hague in 1907, have recurred at the present conference. It may be concluded, both from the statements in the memoranda and from the discussion, that there is no generally accepted rule on this point, nor do there appear to be any precedents which can be adduced. Though the two opposite opinions were defended with great warmth, a lively desire for an understanding was expressed on all sides; everybody was at least agreed that it would be a great advantage to put an end to uncertainty. Serious efforts were made to do justice to the interests espoused by both sides, but these unfortunately failed. A subsidiary question dependent on the previous one, on which, at one moment it appeared possible to come to an agreement, is that of reconversion. According to one proposal it was to be laid down that "merchant vessels converted into warships can not be reconverted into merchant vessels during the whole course of the war." The rule was absolute and made no distinction as regards the place where reconversion could be effected; it was dictated by the idea that such conversion would always have disadvantages, would be productive of surprises, and lead to actual frauds. As unanimity in favor of this proposal was not forthcoming, a subsidiary one was brought forward, viz, "The conversion of a warship into a merchant vessel on the high seas is forbidden during the war."

The case had in view was that a warship (generally a recently converted merchant vessel) doffing its character so as to be able freely to revictual or refit in a neutral port without being bound by the restrictions imposed on warships. Will not the position of the neutral State between two belligerents be delicate, and will not such State expose itself to reproach whether it treats the newly converted ship as a merchant vessel or as a warship? Agreement might perhaps have been reached on this proposal, but it seemed very difficult to deal with this secondary aspect of a question which there was no hope of settling as a whole. This was the decisive reason for the rejection of all proposals.

The question of conversion on the high seas and that of reconversion therefore remain open.

2. Under head (*h*) the British program mentions the question whether the nationality or the domicile of the owner should be adopted as the dominant factor in deciding whether property is enemy property. This question was subjected to a searching examination by a special committee, which had to acknowledge the uncertainty of actual practice; it was proposed to put an end to this by the following provisions:

The neutral or enemy character of goods found on board an enemy vessel is determined by the neutral or enemy nationality of their owner, or, if he is of no nationality or of double nationality (i. e., both neutral and enemy), by his domicile in a neutral or enemy country; provided that goods belonging to a limited liability or joint stock company are considered as neutral or enemy according as the company has its headquarters in a neutral country.

Unanimity not being forthcoming, these provisions remained without effect.

We now reach the explanation of the declaration itself, on which we shall try, by summarizing the reports already approved by the conference, to give an exact and uncontroversial commentary; this, when it has become an official commentary by receiving the approval of the conference, may serve as a guide to the different authorities—administrative, military, and judicial—who may be called on to apply it.

PRELIMINARY PROVISION.

The signatory powers are agreed that the rules contained in the following chapters correspond in substance with the generally recognized principles of international law.

This provisions dominates all the rules which follow. Its spirit has been indicated in the general remarks to be found at the beginning of this report. The purpose of the conference has, above all, been to note, to define, and, where needful, to complete what might be considered as customary law.

CHAPTER I.—BLOCKADE IN TIME OF WAR.

Blockade is here regarded solely as an operation of war, and there is no intention of touching in any way on what is called "pacific" blockade.

ARTICLE 1.—A blockade must not extend beyond the ports and coasts belonging to or occupied by the enemy.

Blockade, as an operation of war, can be directed by a belligerent only against his adversary. This very simple rule is laid down at

the start, but its full scope is apparent only when it is read in connection with article 18.

ART. 2. In accordance with the declaration of Paris of 1856, a blockade, in order to be binding, must be effective—that is to say, it must be maintained by a force sufficient really to prevent access to the enemy coast line.

The first condition necessary to render a blockade binding is that it should be effective. There has been universal agreement on this subject for a long time. As for the definition of an effective blockade, we thought that we had only to adopt the one to be found in the declaration of Paris of the 16th April, 1856, which, conventionally, binds a great number of States, and is in fact accepted by the rest.

ART. 3. The question whether a blockade is effective is a question of fact.

It is easily to be understood that difficulties often arise on the question whether a blockade is effective or not; opposing interests are at stake. The blockading belligerent wishes to economize his efforts, and neutrals desire their trade to be as little hampered as possible. Diplomatic protests have sometimes been made on this subject. The point may be a delicate one, because no absolute rule can be laid down as to the number and position of the blockading ships. All depends on matters of fact and geographical conditions. In one case a single ship will suffice to blockade a port as effectively as possible, whereas in another a whole fleet may not be enough really to prevent access to one or more ports declared to be blockaded. It is therefore essentially a question of fact, to be decided on the merits of each case, and not according to a formula drawn up beforehand. Who shall decide it? The judicial authority. This will be, in the first place, the national tribunal which is called on to pronounce as to the validity of the prize and which the vessel captured for breach of blockade can ask to declare the capture void, because the blockade, not being effective, was not binding. This resort has always existed; it may not always have given satisfaction to the powers concerned, because they may have thought that the national tribunal was rather naturally led to consider effective the blockade declared to be so by its government. But when the international prize court convention comes into force there will be an absolutely impartial tribunal, to which neutrals may apply, and which will decide whether, in a given case, the blockade was effective or not. The possibility of this resort, besides allowing certain injustices to be redressed, will most likely have a preventive effect, in that a government will take care to establish its blockades in such a way that their effect can not be annulled by decisions which would inflict on it a heavy loss. The full scope of article 3 is thus seen when it is understood that the question with which it deals must be settled by a court. The foregoing explanation is inserted in the report at the request of the committee, in order to remove all possibility of misunderstanding.

ART. 4. A blockade is not regarded as raised if the blockading force is temporarily withdrawn on account of stress of weather.

It is not enough for a blockade to be established; it must be maintained. If it is raised it may be reestablished, but this requires the observance of the same formalities as though it were established for the first time. By tradition, a blockade is not regarded as raised when it is in consequence of stress of weather that the blockading forces are temporarily withdrawn. This is laid down in article 4.

It must be considered limitative in the sense that stress of weather is the only form of compulsion which can be alleged. If the blockading forces were withdrawn for any other reason, the blockade would be regarded as raised, and, if it were resumed, articles 12 (last rule) and 13 would apply.

ART. 5. A blockade must be applied impartially to the ships of all nations.

Blockade, as an operation of lawful warfare, must be respected by neutrals in so far as it really remains an operation of war which has the object of interrupting all commercial relations with the blockaded port. It may not be made the means of allowing a belligerent to favor the vessels of certain nations by letting them pass. This is the point of article 5.

ART. 6. The commander of a blockading force may give permission to a warship to enter, and subsequently to leave, a blockaded port.

Does the prohibition which applies to all merchant vessels apply also to warships? No definite reply can be given. The commander of the blockading forces may think it useful to cut off all communication with the blockaded place and refuse access to neutral warships; no rule is imposed on him. If he lets them in, it is as a matter of courtesy. If a rule has been drawn up merely to lay down this, it is in order that it may not be claimed that a blockade has ceased to be effective on account of leave granted to such and such neutral warships.

The blockading commander must act impartially, as stated in article 5. Nevertheless, the mere fact that he has let a warship pass does not oblige him to let pass all neutral warships which may come. It is question of judgment. The presence of a neutral warship in a blockaded port may not have the same consequences at all stages of the blockade, and the commander must be left free to judge whether he can be courteous without making any sacrifice of his military interests.

ART. 7. In circumstances of distress, acknowledged by an officer of the blockading force, a neutral vessel may enter a place under blockade, and subsequently leave it, provided that she has neither discharged nor shipped any cargo there.

Distress can explain the entrance of a neutral vessel into a blockaded place, for instance, if she is in want of food or water, or needs immediate repairs. As soon as her distress is acknowledged by an authority of the blockading force, she may cross the line of blockade; it is not a favor which she has to ask of the humanity or courtesy of the blockading authority. The latter may deny the state of distress but when once it is proved to exist, the consequence follows of itself. The vessel which has thus entered the blockaded port will not be obliged to remain there for the whole duration of the blockade; she may leave as soon as she is fit to do so, when she has obtained the food or water which she needs, or when she has been repaired. But the leave granted to her must not be made an excuse for commercial transactions; therefore she is forbidden to discharge or ship any cargo.

It is needless to say that a blockading squadron which insisted on preventing a vessel in distress from passing, might do so if she afforded her the help which she needed.

ART. 8. A blockade, in order to be binding, must be declared in accordance with article 9, and notified in accordance with articles 11 and 16.

Independently of the condition prescribed by the declaration of Paris that it must be effective, a blockade, to be binding, must be declared and notified. Article 8 confines itself to laying down the principle which is applied by the following articles.

To remove all possibility of misunderstanding it is enough to define clearly the meaning of these two expressions, which will frequently be used. The declaration of blockade is the act of the competent authority (a government or commander of a squadron) stating that a blockade is, or is about to be, established under conditions to be specified (art. 9). The notification is the fact of bringing the declaration of blockade to the knowledge of the neutral powers or of certain authorities (art. 11).

These two things—declaration and notification—will in most cases be done previously to the enforcement of the rules of blockade, that is to say, to the real prohibition of passage. Nevertheless, as we shall see later, it is sometimes possible for passage to be forbidden by the very fact of the blockade which is brought to the knowledge of a vessel approaching a blockaded port by means of a notification which is special, whereas the notification which has just been defined, and which is spoken of in article 11, is of a general character.

ART. 9. A declaration of blockade is made either by the blockading power or by the naval authorities acting in its name.

It specifies—

(1) The date when the blockade begins.

(2) The geographical limits of the coast line under blockade.

(3) The period within which neutral vessels may come out.

The declaration of blockade in most cases emanates from the belligerent government itself. That government may have left the commander of its naval forces free himself to declare a blockade according to the circumstances. There will not, perhaps, be as much reason as formerly to give this discretion, because of the ease and rapidity of communication. This, being merely an internal question, matters little.

The declaration of blockade must specify certain points which it is in the interest of neutrals to know, in order to be aware of the extent of their obligations. The moment from which it is forbidden to communicate with the blockaded place must be exactly known. It is important, as affecting the obligations both of the blockading power and of neutrals, that there should be no uncertainty as to the places really blockaded. Finally, the custom has long been established of allowing neutral vessels which are in the blockaded port to leave it. This custom is here confirmed, in the sense that the blockading power must allow a period within which vessels may leave; the length of this period is not fixed, because it clearly depends on very varying circumstances, but it is understood that the period should be reasonable.

ART. 10. If the operations of the blockading power, or of the naval authorities acting in its name, do not tally with the particulars, which, in accordance with article 9 (1) and (2), must be inserted in the declaration of blockade, the declaration is void, and a new declaration is necessary in order to make the blockade operative.

The object of this article is to insure the observance of article 9. Supposing the declaration of blockade contains statements which do not tally with the actual facts; it states that the blockade began, or will begin, on such a day, whereas, in fact, it only began several days

later. Its geographical limits are inaccurately given; they are wider than those within which the blockading forces are operating. What shall be the sanction? The nullity of the declaration of blockade, which prevents it from being operative. If then, in such a case, a neutral vessel is captured for breach of blockade, she can refer to the nullity of the declaration of blockade as a plea for the nullity of the capture; if her plea is rejected by the national tribunal, she can appeal to the international court.

To avoid misunderstandings, the significance of this provision must be noticed. The declaration states that the blockade begins on the 1st of February; it really only begins on the 8th. It is needless to say that the declaration had no effect from the 1st to the 8th, because at that time there was no blockade at all; the declaration states a fact, but does not take the place of one. The rule goes further: The declaration shall not even be operative from the 8th onward; it is definitely void, and another must be made.

There is no question here of cases where article 9 is disregarded by neglect to allow neutral vessels in the blockaded port time to leave it. The sanction could not be the same. There is no reason to annul the declaration as regards neutral vessels wishing to enter the blockaded port. A special sanction is needed in that case, and it is provided by article 16, paragraph 2.

ART. 11. A declaration of blockade is notified—

(1) To neutral powers, by the blockading power by means of a communication addressed to the governments direct, or to their representatives accredited to it.

(2) To the local authorities, by the officer commanding the blockading force. The local authorities will, in turn, inform the foreign consular officers at the port or on the coast line under blockade as soon as possible.

A declaration of blockade is not valid unless notified. The observance of a rule can only be required by those who have the opportunity of knowing it.

Two notifications must be made:

1. The first is addressed to neutral powers by the belligerent power, which communicates it to the governments themselves or to their representatives accredited to it. The communication to the governments will in most cases be made through the diplomatic agents; it might happen that a belligerent had no diplomatic relations with a neutral country; he will then address itself, ordinarily by telegraph, directly to the government of that country. It is the duty of the neutral governments advised of the declaration of blockade to take the necessary measures to dispatch the news to the different parts of their territory, especially their ports.

2. The second notification is made by the commander of the blockading force to the local authorities. These must inform, as soon as possible, the foreign consuls residing at the blockaded place or on the blockaded coast line. These authorities would be responsible for the neglect of this obligation. Neutrals might suffer loss from the fact of not having been informed of the blockade in sufficient time.

ART. 12. The rules as to declaration and notification of blockade apply to cases where the limits of a blockade are extended, or where a blockade is reestablished after having been raised.

Supposing a blockade is extended beyond its original limits, as regards the new part, it is a new blockade and, in consequence, the rules as to declaration and notification must be applied to it. The

same is true in cases where a blockade is reestablished after having been raised; the fact that a blockade has already existed in the same locality must not be taken into account.

ART. 13. The voluntary raising of a blockade, as also any restriction in the limits of a blockade, must be notified in the manner prescribed by article 11.

If it is indispensable to know of the establishment of a blockade, it would at least be useful for the public to be told of its raising, since it puts an end to the restrictions imposed on the relations of neutrals with the blockaded port. It has therefore been thought fit to ask the power which raises a blockade to make known the fact in the form in which it has notified the establishment of the blockade. (Art. 11.) Only it must be observed that the sanction could not be the same in the two cases. To insure the notification of the declaration of blockade there is a direct and adequate sanction; an unnotified blockade is not binding. In the case of the raising there can be no parallel to this. The public will really gain by the raising, even without being told of it officially. The blockading power which did not notify the raising would expose itself to diplomatic remonstrances on the ground of the nonfulfillment of an international duty. This nonfulfillment will have more or less serious consequences, according to circumstances. Sometimes the raising of the blockade will really have become known at once, and official notification would add nothing to this effective publicity.

It is needless to add that only the voluntary raising of a blockade is here in question; if the blockading force has been driven off by the arrival of enemy forces, it can not be held bound to make known its defeat, which its adversary will undertake to do without delay. Instead of raising a blockade, a belligerent may confine himself to restricting it; he only blockades one port instead of two. As regards the port which ceases to be included in the blockade, it is a case of voluntary raising, and consequently the same rule applies.

ART. 14. The liability of a neutral vessel to capture for breach of blockade is contingent on her knowledge, actual or presumptive, of the blockade.

For a vessel to be liable to capture for breach of blockade, the first condition is that she must be aware of the blockade, because it is not just to punish some one for breaking a rule which he does not know. Nevertheless, there are circumstances in which, even in the absence of proof of actual knowledge, knowledge may be presumed, the right of rebutting this presumption being always reserved to the party concerned. (Art. 15.)

ART. 15. Failing proof to the contrary, knowledge of the blockade is presumed if the vessel left a neutral port subsequently to the notification of the blockade to the power to which such port belongs, provided that such notification was made in sufficient time.

A vessel has left a neutral port subsequently to the notification of the blockade made to the powers to which the port belongs. Was this notification made in sufficient time; that is to say, so as to reach the port in question, where it had to be published by the port authorities? That is a question of fact to be examined. If it is settled affirmatively, it is natural to suppose that the vessel was aware of the blockade at the time of her departure. This presumption is not, however, absolute, and the right to adduce proof to the contrary is

reserved. It is for the incriminated vessel to furnish it by showing that circumstances existed which explain her ignorance.

ART. 16. If a vessel approaching a blockaded port has no knowledge, actual or presumptive, of the blockade, the notification must be made to the vessel itself by an officer of one of the ships of the blockading force. This notification should be entered in the vessel's log book, and must state the day and hour and the geographical position of the vessel at the time.

If through the negligence of the officer commanding the blockading force no declaration of blockade has been notified to the local authorities, or if in the declaration, as notified, no period has been mentioned within which neutral vessels may come out, a neutral vessel coming out of the blockaded port must be allowed to pass free.

A vessel is supposed to be approaching a blockaded port without its being possible to tell whether she knows or is presumed to know of the existence of the blockade; no notification in the sense of article 11 has reached her. In that case a special notification is necessary in order that the vessel may be duly informed of the fact of the blockade. This notification is made to the vessel herself by an officer of one of the war ships of the blockading force, and is entered on the vessel's log book. It may be made to the vessels of a convoyed fleet by a neutral war ship through the commander of the convoy, who acknowledges receipt of it and takes the necessary measures to have the notification entered on the log book of each vessel. The entry notes the time and place where it is made, and the names of the blockaded places. The vessel is prevented from passing, and the blockade is thus made binding for her, though not previously notified; this adverb is therefore omitted in article 8. It can not be admitted that a merchant vessel should claim to disregard a real blockade, and to break it for the sole reason that she was not personally aware of it. But, though she may be prevented from passing, she may only be captured when she tries to break blockade after receiving the notification. This special notification is seen to play a very small part, and must not be confused with the special notification absolutely insisted on by the practice of certain navies.

What has just been said refers to the vessel coming in. The vessel leaving the blockaded port must also be considered. If a regular notification of the blockade has been made to the local authorities (art. 11 (2)), the position is simple: the vessel is, or is presumed to be, aware of the blockade, and is therefore liable to capture in case she has not kept to the period for leaving allowed by the blockading power. But it may happen that no declaration of blockade has been notified to the local authorities, or that that declaration has contained no mention of the period allowed for leaving, in spite of the rule prescribed by article 9 (3). The sanction of the blockading power's offense is that the vessel must be allowed to go free. It is a strong sanction, which corresponds exactly with the nature of the offense committed, and will be the best means of preventing its commission.

It is needless to say that this provision only concerns vessels to which the period allowed for leaving would have been of use—that is to say, neutral vessels which were in the port at the time when the blockade was established; it has nothing to do with vessels which are in the port after having broken blockade.

The commander of the blockading squadron may always repair his omission or mistake, make a notification of the blockade to the local authorities, or complete that which he has already made.

As is seen from these explanations, the most ordinary case is assumed—that in which the absence of notification implies negligence on the part of the commander of the blockading forces. The situation is clearly altogether changed if the commander has done all in his power to make the notification, but has been prevented from doing so by lack of good will on the part of the local authorities, who have intercepted all communications from outside. In that case he can not be forced to let pass vessels which wish to leave, and which, in the absence of the prescribed notification and of presumptive knowledge of the blockade, are in a position similar to that contemplated in article 16, paragraph 1.

ART. 17. Neutral vessels may not be captured for breach of blockade except within the area of operations of the warships detailed to render the blockade effective.

The other condition of the liability of a vessel to capture is that she should be found within the area of operations of the warships detailed to make the blockade effective; it is not enough that she should be on her way to the blockaded port.

As for what constitutes the area of operations, an explanation has been given which has been universally accepted, and is quoted here as furnishing the best commentary on the rule laid down by article 17:

When a government decides to undertake blockading operations against some part of the enemy coast it details a certain number of warships to take part in the blockade and intrusts the command to an officer whose duty is to use them for the purpose of making the blockade effective. The commander of the naval force thus formed posts the ships at his disposal according to the line of the coast and the geographical position of the blockaded places and instructs each ship as to the part which she has to play, and especially as to the zone which she is to watch. All the zones watched taken together, and so organized as to make the blockade effective, form the area of operations of the blockading naval force.

The area of operations so constituted is intimately connected with the effectiveness of the blockade and also with the number of ships employed on it.

Cases may occur in which a single ship will be enough to keep a blockade effective—for instance, at the entrance of a port or at the mouth of a river with a small estuary, so long as circumstances allow the blockading ship to stay near enough to the entrance. In that case the area of operations is itself near the coast. But, on the other hand, if circumstances force her to remain far off, one ship may not be enough to secure effectiveness, and to maintain this she will then have to be supported by others. From this cause the area of operations become wider and extends farther from the coast. It may therefore vary with circumstances and with the number of blockading ships, but it will always be limited by the condition that effectiveness must be assured.

It does not seem possible to fix the limits of the area of operations in definite figures any more than to fix beforehand and definitely the number of ships necessary to assure the effectiveness of any blockade. These points must be settled according to circumstances in each particular case of a blockade. This might perhaps be done at the time of making the declaration.

It is clear that a blockade will not be established in the same way on a defenseless coast as on one possessing all modern means of defense. In the latter case there could be no question of enforcing a rule such as that which formerly required that ships should be stationary and sufficiently close to the blockaded places; the position would be too dangerous for the ships of the blockading force, which, besides, now possess more powerful means of watching effectively a much wider zone than formerly.

The area of operations of a blockading naval force may be rather wide, but as it depends on the number of ships contributing to the effectiveness of the blockade and is always limited by the condition that it should be effective, it will never reach distant seas where merchant vessels sail which are, perhaps, making for the blockaded ports, but whose destination is contingent on the changes which circumstances may produce in the blockade during their voyage. To sum up, the idea of the area of operations joined with that of effectiveness,

as we have tried to define it—that is to say, including the zone of operations of the blockading forces—allows the belligerent effectively to exercise the right of blockade, which he admittedly possesses, and, on the other hand, saves neutrals from exposure to the drawbacks of blockade at a great distance, while it leaves them free to run the risk which they knowingly incur by approaching points to which access is forbidden by the belligerent.

ART. 18. The blockading forces must not bar access to neutral ports or coasts.

This rule has been thought necessary the better to protect the commercial interests of neutral countries; it completes article 1, according to which a blockade must not extend beyond the ports and coasts of the enemy, which implies that, as it is an operation of war, it must not be directed against a neutral port, in spite of the importance to a belligerent of the part played by that neutral port in supplying his adversary.

ART. 19. Whatever may be the ulterior destination of a vessel or of her cargo, she can not be captured for breach of blockade if, at the moment, she is on her way to a nonblockaded port.

It is the true destination of the vessel which must be considered when a breach of blockade is in question, and not the ulterior destination of the cargo. Proof or presumption of the latter is therefore not enough to justify the capture, for breach of blockade, of a ship actually bound for an unblockaded port. But the cruiser might always prove that this destination to an unblockaded port is only apparent, and that in reality the immediate destination of the vessel is the blockaded port.

ART. 20. A vessel which has broken blockade outward, or which has attempted to break blockade inward, is liable to capture so long as she is pursued by a ship of the blockading force. If the pursuit is abandoned or if the blockade is raised, her capture can no longer be effected.

A vessel has left the blockaded port or has tried to enter it. Shall she remain indefinitely liable to capture? To reply by an absolute affirmative would be to go too far. This vessel must remain liable to capture so long as she is pursued by a ship of the blockading force; it would not be enough for her to be encountered by a cruiser of the blockading enemy which did not belong to the blockading squadron. The question whether or not the pursuit is abandoned is one of fact; it is not enough that the vessel should take refuge in a neutral port. The ship which is pursuing her can wait till she leaves it, so that the pursuit is necessarily suspended, but not abandoned. Capture is no longer possible when the blockade has been raised.

ART. 21. A vessel found guilty of breach of blockade is liable to condemnation. The cargo is also condemned unless it is proved that at the time of the shipment of the goods the shipper neither knew nor could have known of the intention to break the blockade.

The vessel is condemned in all cases. The cargo is also condemned on principle, but the interested party is allowed to oppose a plea of good faith; that is to say, to prove that when the goods were shipped the shipper did not know and could not have known of the intention to break the blockade.

CHAPTER II.—CONTRABAND OF WAR.

This chapter is one of the most, if not the most, important of the declaration. It deals with a matter which has sometimes given rise to serious disputes between belligerents and neutrals. Therefore regulations to establish exactly the rights and duties of each have

often been urgently called for. Peaceful trade may be grateful for the precision with which a subject of the highest importance to its interests is now for the first time treated.

The notion of contraband of war connotes two elements: It concerns objects of a certain kind and with a certain destination. Cannons, for instance, are carried in a neutral vessel. Are they contraband? That depends; if they are destined for a neutral government, no; if they are destined for an enemy government, yes. The trade in certain articles is by no means generally forbidden during war; it is the trade with the enemy in these articles which is illicit, and against which the belligerent to whose detriment it is carried on may protect himself by the measures allowed by international law.

Articles 22 and 24 enumerate the articles which may be contraband of war, and which are so in fact when they have a certain destination laid down in articles 30 and 33. The traditional distinction between absolute and conditional contraband is maintained. Articles 22 and 30 refer to the former, and articles 24 and 33 to the latter.

ART. 22. The following articles may, without notice,[1] be treated as contraband of war, under the name of absolute contraband:

(1) Arms of all kinds, including arms for sporting purposes, and their distinctive component parts.

(2) Projectiles, charges, and cartridges of all kinds, and their distinctive component parts.

(3) Powder and explosives specially prepared for use in war.

(4) Gun mountings, limber boxes, limbers, military wagons, field forges, and their distinctive component parts.

(5) Clothing and equipment of a distinctively military character.

(6) All kinds of harness of a distinctively military character.

(7) Saddle, draft, and pack animals suitable for use in war.

(8) Articles of camp equipment, and their distinctive component parts.

(9) Armor plates.

(10) Warships, including boats and their distinctive component parts of such a nature that they can only be used on a vessel of war.

(11) Implements and apparatus designed exclusively for the manufacture of munitions of war, for the manufacture or repair of arms, or war material for use on land or sea.

This list is that drawn up at the second peace conference by the committee charged with the special study of the question of contraband. It was the result of mutual concessions, and it has not seemed wise to reopen the discussion on this subject for the purpose either of cutting out or of adding articles.

The words "de plein droit" (without notice) imply that the provision becomes operative by the mere fact of the war, and that no declaration by the belligerents is necessary. Trade is already warned in time of peace.

ART. 23. Articles exclusively used for war may be added to the list of absolute contraband by a declaration, which must be notified.

Such notification must be addressed to the governments of other powers, or to their representatives accredited to the power making the declaration. A notification made after the outbreak of hostilities is addressed only to neutral powers.

Certain discoveries or inventions might make the list in article 22 insufficient. An addition may be made to it on condition that it

[1] In view of the difficulty of finding an exact equivalent in English for the expression "de plein droit," it has been decided to translate it by the words "without notice," which represent the meaning attached to it by the draftsman of the present General Report (see next page).

concerns articles exclusively used for war. This addition must be notified to the other powers, which will take the necessary measures to inform their subjects of it. In theory the notification may be made in time of peace or of war. The former case will doubtless rarely occur, because a state which made such a notification might be suspected of meditating a war; it would, nevertheless, have the advantage of informing trade beforehand. There was no reason for making it impossible.

The right given to a power to make an addition to the list by a mere declaration has been thought too wide. It should be noticed that this right does not involve the dangers supposed. In the first place, it is understood that the declaration is only operative for the power which makes it, in the sense that the article added will only be contraband for it, as a belligerent; other states may, of course, also make a similar declaration. The addition may only refer to articles exclusively used for war; at present it would be hard to mention any such articles which are not included in the list. The future is left free. If a power claimed to add to the list of absolute contraband articles not exclusively used for war, it might expose itself to diplomatic remonstrances, because it would be disregarding an accepted rule. Besides, there would be an eventual resort to the international prize court. Suppose that the court holds that the article mentioned in the declaration of absolute contraband is wrongly placed there because it is not exclusively used for war, but that it might have been included in a declaration of conditional contraband. Confiscation may then be justified if the capture was made in the conditions laid down for this kind of contraband (arts. 33–35) which differ from those enforced for absolute contraband (art. 30).

It had been suggested that, in the interest of neutral trade, a period should lapse between the notification and its enforcement. But that would be very damaging to the belligerent, whose object is precisely to protect himself, since, during that period, the trade in articles which he thinks dangerous would be free and the effect of his measure a failure. Account has been taken, in another form, of the considerations of equity which have been adduced (see art. 43).

ART. 24. The following articles, susceptible of use in war as well as for purposes of peace, may, without notice,[1] be treated as contraband of war, under the name of conditional contraband:

(1) Foodstuffs.
(2) Forage and grain, suitable for feeding animals.
(3) Clothing, fabrics for clothing, and boots and shoes, suitable for use in war.
(4) Gold and silver in coin or bullion; paper money.
(5) Vehicles of all kinds available for use in war, and their component parts.
(6) Vessels, craft, and boats of all kinds; floating docks, parts of docks, and their component parts.
(7) Railway material, both fixed and rolling stock, and material for telegraphs, wireless telegraphs, and telephones.
(8) Balloons and flying machines and their distinctive component parts, together with accessories and articles recognizable as intended for use in connection with balloons and flying machines.
(9) Fuel; lubricants.
(10) Powder and explosives not specially prepared for use in war.
(11) Barbed wire and implements for fixing and cutting the same.
(12) Horseshoes and shoeing materials.
(13) Harness and saddlery.

[1] See note to art. 22.

(14) Field glasses, telescopes, chronometers, and all kinds of nautical instruments.

On the expression "de plein droit" (without notice) the same remark must be made as with regard to article 22. The articles enumerated are only conditional contraband if they have the destination specified in article 33.

Foodstuffs include products necessary or useful for sustaining man, whether solid or liquid.

Paper money only includes inconvertible paper money, i. e., bank notes which may or not be legal tender. Bills of exchange and checks are excluded.

Engines and boilers are included in (6).

Railway material includes fixtures (such as rails, sleepers, turntables, parts of bridges), and rolling stock (such as locomotives, carriages, and trucks).

ART. 25. Articles susceptible of use in war as well as for purposes of peace, other than those enumerated in articles 22 and 24, may be added to the list of conditional contraband by a declaration, which must be notified in the manner provided for in the second paragraph of article 23.

This provision corresponds, as regards conditional contraband, to that in article 23 as regards absolute contraband.

ART. 26. If a power waives, so far as it is concerned, the right to treat as contraband of war an article comprised in any of the classes enumerated in articles 22 and 24, such intention shall be announced by a declaration, which must be notified in the manner provided for in the second paragraph of article 23.

A belligerent may not wish to use the right to treat as contraband of war all the articles included in the above lists. It may suit him to add to conditional contraband an article included in absolute contraband or to declare free, so far as he is concerned, the trade in some article included in one class or the other. It is desirable that he should make known his intention on this subject, and he will probably do so in order to have the credit of the measure. If he does not do so, but confines himself to giving instructions to his cruisers, the vessels searched will be agreeably surprised if the searcher does not reproach them with carrying what they themselves consider contraband. Nothing can prevent a power from making such a declaration in time of peace. See what is said as regards article 23.

ART. 27. Articles which are not susceptible of use in war may not be declared contraband of war.

The existence of a so-called free list (art. 28) makes it useful thus to put on record that articles which can not be used for purposes of war may not be declared contraband of war. It might have been thought that articles not included in that list might at least be declared conditional contraband.

ART. 28. The following may not be declared contraband of war:

(1) Raw cotton, wool, silk, jute, flax, hemp, and other raw materials of the textile industries, and yarns of the same.

(2) Oil seeds and nuts; copra.

(3) Rubber, resins, gums, and lacs; hops.

(4) Raw hides and horns, bones, and ivory.

(5) Natural and artificial manures, including nitrates and phosphates for agricultural purposes.

(6) Metallic ores.

(7) Earths, clays, lime, chalk; stone, including marble, bricks, slates, and tiles.

(8) Chinaware and glass.
(9) Paper and paper-making materials.
(10) Soap, paint and colors, including articles exclusively used in their manufacture, and varnish.
(11) Bleaching powder, soda ash, caustic soda, salt cake, ammonia, sulphate of ammonia, and sulphate of copper.
(12) Agricultural, mining, textile, and printing machinery.
(13) Precious and semiprecious stones, pearls, mother-of-pearl, and coral.
(14) Clocks and watches, other than chronometers.
(15) Fashion and fancy goods.
(16) Feathers of all kinds, hairs, and bristles.
(17) Articles of household furniture and decoration; office furniture and requisites.

To lessen the drawbacks of war as regards neutral trade it has been thought useful to draw up this so-called free list, but this does not mean, as has been explained above, that all articles outside it might be declared contraband of war.

The ores here referred to are the product of mines from which metals are derived.

There was a demand that dyestuffs should be included in (10), but this seemed too general, for there are materials from which colors are derived, such as coal, which also have other uses. Products only used for making colors enjoy the exemption.

"Articles de Paris," an expression the meaning of which is universally understood, come under (15).

(16) refers to the hair of certain animals, such as pigs and wild boars.

Carpets and mats come under household furniture and ornaments (17).

ART. 29. Likewise the following may not be treated as contraband of war:
(1) Articles serving exclusively to aid the sick and wounded. They can, however, in case of urgent military necessity and subject to the payment of compensation, be requisitioned, if their destination is that specified in article 30.
(2) Articles intended for the use of the vessel in which they are found, as well as those intended for the use of her crew and passengers during the voyage.

The articles enumerated in article 29 are also excluded from treatment as contraband, but for reasons different from those which have led to the inclusion of the list in article 28.

Motives of humanity have exempted articles exclusively used to aid the sick and wounded, which, of course, include drugs and different medicines. This does not refer to hospital ships, which enjoy special immunity under the convention of The Hague of the 18th October, 1907, but to ordinary merchant vessels, whose cargo includes articles of the kind mentioned. The cruiser has, however, the right, in case of urgent necessity, to requisition such articles for the needs of her crew or of the fleet to which she belongs, but they can only be requisitioned on payment of compensation. It must, however, be observed that this right of requisition may not be exercised in all cases. The articles in question must have the destination specified in article 30—that is to say, an enemy destination. Otherwise, the ordinary law regains its sway; a belligerent could not have the right of requisition as regards neutral vessels on the high seas.

Articles intended for the use of the vessel, which might in themselves and by their nature be contraband of war, may not be so treated; for instance, arms intended for the defense of the vessel against pirates or for making signals. The same is true of articles

intended for the use of the crew and passengers during the voyage; the crew here includes all persons in the service of the vessel in general.

Destination of contraband.—As has been said, the second element in the notion of contraband is destination. Great difficulties have arisen on this subject, which find expression in the theory of continuous voyage, so often attacked or adduced without a clear comprehension of its exact meaning. Cases must simply be considered on their merits so as to see how they can be settled without unnecessarily annoying neutrals or sacrificing the legitimate rights of belligerents.

In order to effect a compromise between conflicting theories and practices, absolute and conditional contraband have been differently treated in this connection.

Articles 30 to 32 refer to absolute, and articles 33 to 36 to conditional contraband.

ART. 30. Absolute contraband is liable to capture if it is shown to be destined to territory belonging to or occupied by the enemy, or to the armed forces of the enemy. It is immaterial whether the carriage of the goods is direct or entails transshipment or a subsequent transport by land.

The articles included in the list in article 22 are absolute contraband when they are destined for territory belonging to or occupied by the enemy, or for his armed military or naval forces. These articles are liable to capture as soon as a final destination of this kind can be shown by the captor to exist. It is not, therefore, the destination of the vessel which is decisive, but that of the goods. It makes no difference if these goods are on board a vessel which is to discharge them in a neutral port; as soon as the captor is able to show that they are to be forwarded from there by land or sea to an enemy country it is enough to justify the capture and subsequent condemnation of the cargo. The very principle of continuous voyage, as regards absolute contraband, is established by article 30. The journey made by the goods is regarded as a whole.

ART. 31. Proof of the destination specified in article 30 is complete in the following cases:

(1) When the goods are documented for discharge in an enemy port, or for delivery to the armed forces of the enemy.

(2) When the vessel is to call at enemy ports only, or when she is to touch at an enemy port or meet the armed forces of the enemy before reaching the neutral port for which the goods in question are documented.

As has been said, the obligation of proving that the contraband goods really have the destination specified in article 30 rests with the captor. In certain cases proof of the destination specified in article 31 is conclusive; that is to say, the proof may not be rebutted.

First case.—The goods are documented for discharge in an enemy port; that is to say, according to the ship's papers referring to those goods, they are to be discharged there. In this case there is a real admission of enemy destination on the part of the interested parties themselves.

Second case.—The vessel is to touch at enemy ports only, or she is to touch at an enemy port before reaching the neutral port for which the goods are documented, so that although these goods, according to the papers referring to them, are to be discharged in a neutral port, the vessel carrying them is to touch at an enemy port before reaching that neutral port. They will be liable to capture, and the possibility of proving that their neutral destination is real and in

accordance with the intentions of the parties interested is not admitted. The fact that before reaching that destination the vessel will touch at an enemy port would occasion too great a risk for the belligerent whose cruiser searches the vessel. Even without assuming that there is intentional fraud, there might be a strong temptation for the master of the merchant vessel to discharge the contraband, for which he would get a good price, and for the local authorities to requisition the goods.

The same case arises where the vessel, before reaching the neutral port, is to join the armed forces of the enemy.

For the sake of simplicity, the provision only speaks of an enemy port, but it is understood that a port occupied by the enemy must be regarded as an enemy port, as follows from the general rule in article 30.

ART. 32. Where a vessel is carrying absolute contraband, her papers are conclusive proof as to the voyage on which she is engaged, unless she is found clearly out of the course indicated by her papers and unable to give adequate reasons to justify such deviation.

The papers therefore are conclusive proof of the course of the vessel, unless she is encountered in circumstances which show that their statements are not to be trusted. See also the explanations given as regards article 35.

ART. 33. Conditional contraband is liable to capture if it is shown to be destined for the use of the armed forces or of a government department of the enemy state, unless in this latter case the circumstances show that the goods can not in fact be used for the purposes of the war in progress. This latter exception does not apply to a consignment coming under article 24 (4).

The rules for conditional contraband differ from those laid down for absolute contraband in two respects: (1) There is no question of destination for the enemy in general, but of destination for the use of his armed forces or government departments; (2) the doctrine of continuous voyage is excluded. Articles 33 and 34 refer to the first and article 35 to the second principle.

The articles included in the list of conditional contraband may serve for peaceful uses as well as for hostile purposes. If from the circumstances the peaceful purpose is clear, their capture is not justified; it is otherwise if a hostile purpose is to be assumed, as, for instance, in the case of foodstuffs destined for an enemy army or fleet, or of coal destined for an enemy fleet. In such a case there is clearly no room for doubt. But what is the solution when the articles are destined for the civil government departments of the enemy state? It may be money sent to a government department for use in the payment of its official salaries, or rails sent to a department of public works. In these cases there is enemy destination which renders the goods liable in the first place to capture and in the second to condemnation. The reasons for this are at once legal and practical. The state is one, although it necessarily acts through different departments. If a civil department may freely receive foodstuffs or money, that department is not the only gainer, but the entire state, including its military administration, gains also, since the general resources of the state are thereby increased. Further, the receipts of a civil department may be considered of greater use to the military administration and directly assigned to the latter. Money or foodstuffs really destined for a civil department may thus come to be used directly for the needs of the army. This possibility, which is always present,

shows why destination for the departments of the enemy state is assimilated to that for its armed forces.

It is the departments of the state which are dependent on the central power that are in question and not all the departments which may exist in the enemy state; local and municipal bodies, for instance, are not included, and articles destined for their use would not be contraband.

War may be waged in such circumstances that destination for the use of a civil department can not be suspect, and consequently can not make goods contraband. For instance, there is a war in Europe, and the colonies of the belligerent countries are not in fact affected by it. Foodstuffs or other articles in the list of conditional contraband destined for the use of the civil government of a colony would not be held to be contraband of war, because the considerations adduced above do not apply to their case; the resources of the civil government can not be drawn on for the needs of the war. Gold, silver, or paper money are exceptions, because a sum of money can easily be sent from one end of the world to the other.

ART. 34. The destination referred to in article 33 is presumed to exist if the goods are consigned to enemy authorities, or to a contractor established in the enemy country, who, as a matter of common knowledge, supplies articles of this kind to the enemy. A similar presumption arises if the goods are consigned to a fortified place belonging to the enemy, or other place serving as a base for the armed forces of the enemy. No such presumption, however, arises in the case of a merchant vessel bound for one of these places if it is sought to prove that she herself is contraband.

In cases where the above presumptions do not arise, the destination is presumed to be innocent.

The presumptions set up by this article may be rebutted.

Contraband articles will not usually be directly addressed to the military authorities or to the government departments of the enemy state. Their true destination will be more or less concealed, and the captor must prove it in order to justify their capture. But it has been thought reasonable to set up presumptions based on the nature of the person to whom, or place for which, the articles are destined. It may be an enemy authority or a trader established in an enemy country who, as a matter of common knowledge, supplies the enemy government with articles of the kind in question. It may be a fortified place belonging to the enemy or a place used as a base, whether of operations or of supply, for the armed forces of the enemy.

This general presumption may not be applied to the merchant vessel herself on her way to a fortified place, though she may in herself be conditional contraband, but only if her destination for the use of the armed forces or government departments of the enemy state is directly proved.

In the absence of the above presumptions, the destination is presumed to be innocent. That is the ordinary law, according to which the captor must prove the illicit character of the goods which he claims to capture.

Finally, all the presumptions thus set up in the interest of the captor or against him may be rebutted. The national tribunals, in the first place, and, in the second, the international court, will exercise their judgment.

ART. 35. Conditional contraband is not liable to capture, except when found on board a vessel bound for territory belonging to or occupied by the enemy,

or for the armed forces of the enemy, and when it is not to be discharged in an intervening neutral port.

The ship's papers are conclusive proof both as to the voyage on which the vessel is engaged and as to the port of discharge of the goods, unless she is found clearly out of the course indicated by her papers, and unable to give adequate reasons to justify such deviation.

As has been said above, the doctrine of continuous voyage is excluded for conditional contraband, which is only liable to capture when it is to be discharged in an enemy port. As soon as the goods are documented for discharge in a neutral port they can no longer be contraband, and no examination will be made as to whether they are to be forwarded to the enemy by sea or land from that neutral port. It is here that the case of absolute contraband is essentially different.

The ship's papers furnish complete proof as to the voyage on which the vessel is engaged and as to the place where the cargo is to be discharged; but this would not be so if the vessel were encountered clearly out of the course which she should follow according to her papers, and unable to give adequate reasons to justify such deviation.

This rule as to the proof furnished by the ship's papers is intended to prevent claims frivolously raised by a cruiser and giving rise to unjustifiable captures. It must not be too literally interpreted, for that would make all frauds easy. Thus it does not hold good when the vessel is encountered at sea clearly out of the course which she ought to have followed, and unable to justify such deviation. The ship's papers are then in contradiction with the true facts and lose all value as evidence; the cruiser will be free to decide according to the merits of the case. In the same way, a search of the vessel may reveal facts which irrefutably prove that her destination or the place where the goods are to be discharged is incorrectly entered in the ship's papers. The commander of the cruiser is then free to judge of the circumstances and capture the vessel or not according to his judgment. To resume, the ship's papers are proof, unless facts show their evidence to be false. This qualification of the value of the ship's papers as proof seems self-evident and unworthy of special mention. The aim has been not to appear to weaken the force of the general rule, which forms a safeguard for neutral trade.

It does not follow that because a single entry in the ship's papers is shown to be false their evidence loses its value as a whole. The entries which can not be proved false retain their value.

ART. 36. Notwithstanding the provisions of article 35, conditional contraband, if shown to have the destination referred to in article 33, is liable to capture in cases where the enemy country has no seaboard.

The case contemplated is certainly rare, but has nevertheless arisen in recent wars. In the case of absolute contraband, there is no difficulty, since destination for the enemy may always be proved, whatever the route by which the goods are sent (art. 30). For conditional contraband the case is different, and an exception must be made to the general rule laid down in article 35, paragraph 1, so as to allow the captor to prove that the suspected goods really have the special destination referred to in article 33 without the possibility of being confronted by the objection that they were to be discharged in a neutral port.

ART. 37. A vessel carrying goods liable to capture as absolute or conditional contraband may be captured on the high seas or in the territorial waters of the

belligerents throughout the whole of her voyage, even if she is to touch at a port of call before reaching the hostile destination.

The vessel may be captured for contraband during the whole of her voyage, provided that she is in waters where an act of war is lawful. The fact that she intends to touch at a port of call before reaching the enemy destination does not prevent capture, provided that destination in her particular case is proved in conformity with the rules laid down in articles 30 to 32 for absolute, and in articles 33 to 35 for conditional contraband, subject to the exception provided for in article 36.

ART. 38. A vessel may not be captured on the ground that she has carried contraband on a previous occasion if such carriage is in point of fact at an end.

A vessel is liable to capture for carrying contraband, but not for having done so.

ART. 39. Contraband goods are liable to condemnation.

This presents no difficulty.

ART. 40. A vessel carrying contraband may be condemned if the contraband, reckoned either by value, weight, volume, or freight, forms more than half the cargo.

It was universally admitted that in certain cases the condemnation of the contraband is not enough, and that the vessel herself should also be condemned, but opinions differed as to what these cases were. It was decided that the contraband must bear a certain proportion to the total cargo. But the question divides itself into two parts: (1) What shall be the proportion? The solution adopted is the mean between those proposed, which varied from a quarter to three-quarters. (2) How shall this proportion be reckoned? Must the contraband form more than half the cargo in volume, weight, value, or freight? The adoption of a single fixed standard gives rise to theoretical objections, and also to practices intended to avoid condemnation of the vessel in spite of the importance of the cargo. If the standard of volume or weight is adopted, the master will ship innocent goods, occupying space, or of weight, sufficient to exceed the contraband. A similar remark may be made as regards the standard of value or freight. The consequence is that in order to justify condemnation, it is enough that the contraband should form more than half the cargo by any one of the above standards. This may seem harsh; but, on the one hand, any other system would make fraudulent calculations easy, and, on the other, the condemnation of the vessel may be said to be justified when the carriage of contraband formed an important part of her venture—a statement which applies to all the cases specified.

ART. 41. If a vessel carrying contraband is released, she may be condemned to pay the costs and expenses incurred by the captor in respect of the proceedings in the national prize court and the custody of the ship and cargo during the proceedings.

It is not just that, on the one hand, the carriage of more than a certain proportion of contraband should involve the condemnation of the vessel, while if the contraband forms less than this proportion, it alone is confiscated. This often involves no loss for the master, the freight of this contraband having been paid in advance. Does this not encourage trade in contraband, and ought not a certain penalty to be imposed for the carriage of a proportion of contraband

less than that required to entail condemnation? A kind of fine was proposed which should bear a relation to the value of the contraband articles. Objections of various sorts were brought forward against this proposal, although the principle of the infliction of some kind of pecuniary loss for the carriage of contraband seemed justified. The same object was attained in another way by providing that the costs and expenses incurred by the captor in respect of the proceedings in the national prize court and of the custody of the vessel and of her cargo during the proceedings are to be paid by the vessel. The expenses of the custody of the vessel include in this case the keep of the captured vessel's crew. It should be added that the loss to a vessel by being taken to a prize port and kept there is the most serious deterrent as regards the carriage of contraband.

ART. 42. Goods which belong to the owner of the contraband and are on board the same vessel are liable to condemnation.

The owner of the contraband is punished in the first place by the condemnation of his contraband property; and in the second by that of the goods, even if innocent, which he may possess on board the same vessel.

ART. 43. If a vessel is encountered at sea while unaware of the outbreak of hostilities or of the declaration of contraband which applies to her cargo, the contraband can not be condemned except on payment of compensation; the vessel herself and the remainder of the cargo are not liable to condemnation or to the costs and expenses referred to in article 41. The same rule applies if the master, after becoming aware of the outbreak of hostilities, or of the declaration of contraband, has had no opportunity of discharging the contraband.

A vessel is deemed to be aware of the existence of a state of war, or of a declaration of contraband, if she left a neutral port subsequently to the notification to the power to which such port belongs of the outbreak of hostilities, or of the declaration of contraband, provided such notification was made in sufficient time. A vessel is also deemed to be aware of the existence of a state of war if she left an enemy port after the outbreak of hostilities.

This provision is intended to spare neutrals who might in fact be carrying contraband, but against whom no charge could be made. This may arise in two cases: The first is that in which they are unaware of the outbreak of hostilities; the second is that in which, though aware of this, they do not know of the declaration of contraband made by a belligerent, in accordance with articles 23 and 25, which is, as it happens, the one applicable to the whole or a part of the cargo. It would be unjust to capture the ship and condemn the contraband; on the other hand, the cruiser can not be obliged to let go on to the enemy goods suitable for use in the war of which he may stand in urgent need. These opposing interests are reconciled by making condemnation conditional on the payment of compensation. (See the convention of the 18th October, 1907, on the rules for enemy merchant vessels on the outbreak of hostilities, which expresses a similar idea.)

ART. 44. A vessel which has been stopped on the ground that she is carrying contraband, and which is not liable to condemnation on account of the proportion of contraband on board, may, when the circumstances permit, be allowed to continue her voyage if the master is willing to hand over the contraband to the belligerent warship.

The delivery of the contraband must be entered by the captor on the logbook of the vessel stopped, and the master must give the captor duly certified copies of all relevant papers.

The captor is at liberty to destroy the contraband that has been handed over to him under these conditions.

A neutral vessel is stopped for carrying contraband. She is not liable to condemnation, because the contraband does not reach the proportion specified in article 40. She can, nevertheless, be taken to a prize port for judgment to be passed on the contraband. This right of the captor appears too wide in certain cases, if the importance of the contraband, possibly slight (for instance, a case of guns or revolvers), is compared with the heavy loss incurred by the vessel by being thus turned out of her course and detained during the time taken up by the proceedings. The question has, therefore, been asked whether the right of the neutral vessel to continue her voyage might not be admitted if the contraband articles were handed over to the captor, who, on his part, might only refuse to receive them for sufficient reasons, for instance, the rough state of the sea, which would make transshipment difficult or impossible, well-founded suspicions as to the amount of contraband which the merchant vessel is really carrying, the difficulty of stowing the articles on board the warship, etc. This proposal did not gain sufficient support. It was alleged to be impossible to impose such an obligation on the cruiser, for which this handing over of goods would almost always have drawbacks. If, by chance, it has none, the cruiser will not refuse it, because she herself will gain by not being turned out of her course by having to take the vessel to a port. The idea of an obligation having thus been excluded, it was decided to provide for the voluntary handing over of the contraband, which, it is hoped, will be carried out whenever possible, to the great advantage of both parties. The formalities provided for are very simple and need no explanation.

There must be a judgment of a prize court as regards the goods thus handed over. For this purpose the captor must be furnished with the necessary papers. It may be supposed that there might be doubt as to the character of certain articles which cruiser claims as contraband; the master of the merchant vessel contests this claim, but prefers to deliver them up so as to be at liberty to continue his voyage. This is merely a capture which has to be confirmed by the prize court.

The contraband delivered up by the merchant vessel may hamper the cruiser, which must be left free to destroy it at the moment of handing over, or later.

Chapter III.—Unneutral Service.

In a general way, it may be said that the merchant vessel which violates neutrality, whether by carrying contraband of war or by breaking blockade, affords aid to the enemy, and it is on this ground that the belligerent whom she injures by her acts is justified in inflicting on her certain losses. But there are cases where such unneutral service bears a particularly distinctive character, and for such cases it has been thought necessary to make special provision. They have been divided into two classes according to the gravity of the act of which the neutral vessel is accused.

In the cases included in the first class (art. 45), the vessel is condemned, and receives the treatment of a vessel subject to condemnation for carrying contraband. This means that the vessel does not lose her neutral character and has a full claim to the rights enjoyed by neutral vessels; for instance, she may not be destroyed by the captor except under the conditions laid down for neutral vessels (arts. 48 et seq.); the rule that the flag covers the goods applies to goods she carries on board.

In the more serious cases which belong to the second class (art. 46), the vessel is again condemned; but further, she is treated not only as a vessel subject to condemnation for carrying contraband, but as an enemy merchant vessel, which treatment entails certain consequences. The rules governing the destruction of neutral prizes does not apply to the vessel, and as she has become an enemy vessel, it is no longer the second but the third rule of the declaration of Paris which is applicable. The goods on board will be presumed to be enemy goods; neutrals will have the right to claim their property on establishing their neutrality (art. 59). It would, however, be going too far to say that the original neutral character of the vessel is completely lost, so that she should be treated as though she had always been an enemy vessel. The vessel may plead that the allegation made against her has no foundation in fact, that the act of which she is accused has not the character of unneutral service. She has, therefore, the right of appeal to the international court in virtue of the provisions which protect neutral property.

ART. 45. A neutral vessel will be condemned and will, in a general way, receive the same treatment as a neutral vessel liable to condemnation for carriage of contraband—

(1) If she is on a voyage specially undertaken with a view to the transport of individual passengers who are embodied in the armed forces of the enemy, or with a view to the transmission of intelligence in the interest of the enemy.

(2) If, to the knowledge of either the owner, the charterer, or the master, she is transporting a military detachment of the enemy, or one or more persons who, in the course of the voyage, directly assist the operations of the enemy.

In the cases specified under the above heads, goods belonging to the owner of the vessel are likewise liable to condemnation.

The provisions of the present article do not apply if the vessel is encountered at sea while unaware of the outbreak of hostilities, or if the master, after becoming aware of the outbreak of hostilities, has had no opportunity of disembarking the passengers. The vessel is deemed to be aware of the existence of a state of war if she left an enemy port subsequently to the outbreak of hostilities or a neutral port subsequently to the notification of the outbreak of hostilities to the power to which such port belongs, provided that such notification was made in sufficient time.

The first case supposes passengers traveling as individuals; the case of a military detachment is dealt with hereafter. The case is that of individuals embodied in the armed military or naval forces of the enemy. There was some doubt as to the meaning of this word. Does it include those individuals only who are summoned to serve in virtue of the law of their country and who have really joined the corps to which they are to belong? Or does it also include such individuals from the moment when they are summoned and before they join that corps? The question is of great practical importance. Supposing the case is one of individuals who are natives of a continental European country and are settled in America; these individuals have military obligations toward their country of origin; they have, for instance, to belong to the reserve of the active army of that country. Their country is at war and they sail to perform their service. Shall they be considered as embodied in the sense of the provision which we are discussing? If we judged by the municipal law of certain countries we might argue that they should be so considered. But, apart from reasons of pure law, the contrary opinion has seemed more in accordance with practical necessity and has been accepted by all in a spirit of conciliation. It would be difficult, perhaps even impossible, without having recourse to vexatious measures to which neutral governments would not unwillingly submit, to

pick out among the passengers in a vessel those who are bound to perform military service and are on their way to do so.

The transmission of intelligence in the interest of the enemy is to be treated in the same way as the carriage of passengers embodied in his armed force. The reference to a vessel especially undertaking a voyage is intended to show that her usual service is not meant. She has been turned from her course; she has touched at a port which she does not ordinarily visit in order to embark the passengers in question. She need not be exclusively devoted to the service of the enemy; that case would come into the second class (art. 56 (4)).

In the two cases just mentioned the vessel has performed but a single service; she has been employed to carry certain people, or to transmit certain intelligence; she is not continuously in the service of the enemy. In consequence she may be captured during the voyage on which she is performing the service which she has to render. Once that voyage is finished, all is over, in the sense that she may not be captured for having rendered the service in question. The principle is the same as that recognized in the case of contraband (art. 38).

The second case also falls under two heads.

There is, first, the carriage of a military detachment of the enemy, or that of one or more persons who during the voyage directly assist his operations, for instance, by signaling. If these people are soldiers or sailors in uniform there is no difficulty, the vessel is clearly liable for condemnation. If they are soldiers or sailors in mufti, who might be mistaken for ordinary passengers, knowledge on the part of the master or owner is required, the charterer being assimilated to the latter. The rule is the same in the case of persons directly assisting the enemy during the voyage.

In these cases, if the vessel is condemned for unneutral service, the goods belonging to her owner are also liable to condemnation.

These provisions assume that the state of war was known to the vessel engaged in the operations specified; such knowledge is the reason and justification of her condemnation. The position is altogether different when the vessel is unaware of the outbreak of hostilities, so that she undertakes the service in ordinary circumstances. She may have learned of the outbreak of hostilities while at sea, but have had no chance of landing the persons whom she was carrying. Condemnation would then be unjust, and the equitable rule adopted is in accordance with the provisions already accepted in other matters. If a vessel has left an enemy port subsequently to the outbreak of hostilities, or a neutral port after that outbreak has been notified to the power to whom such port belongs, her knowledge of the existence of a state of war will be presumed.

The question here is merely one of preventing the condemnation of the vessel. The persons found on board her who belong to the armed forces of the enemy may be made prisoners of war by the cruiser.

ART. 46. A neutral vessel is liable to condemnation and, in a general way, to the same treatment as would be applicable to her if she were an enemy merchant vessel—

(1) If she takes a direct part in the hostilities.

(2) If she is under the orders or control of an agent placed on board by the enemy government.

(3) If she is in the exclusive employment of the enemy government.

(4) If she is exclusively engaged at the time either in the transport of enemy troops or in the transmission of intelligence in the interest of the enemy.

In the cases covered by the present article, goods belonging to the owner of the vessel are likewise liable to condemnation.

The cases here contemplated are more serious than those in article 45, which justifies the severer treatment inflicted on the vessel, as explained above.

First case.—The vessel takes a direct part in the hostilities. This may take different forms. It is needless to say that, in an armed conflict, the vessel takes all the risks incidental thereto. We suppose her to have fallen into the power of the enemy whom she was fighting, and who is entitled to treat her as an enemy merchant vessel.

Second case.—The vessel is under the orders or control of an agent placed on board by the enemy government. His presence marks the relation in which she stands to the enemy. In other circumstances the vessel may also have relations with the enemy, but to be subject to condemnation she must come under the third head.

Third case.—The whole vessel is chartered by the enemy government, and is therefore entirely at its disposal; it can use her for different purposes more or less directly connected with the war, notably, as a transport; such is the position of colliers which accompany a belligerent fleet. There will often be a charter party between the belligerent government and the owner or master of the vessel, but all that is required is proof, and the fact that the whole vessel has, in fact, been chartered is enough, in whatever way it may be established.

Fourth case.—The vessel is at the time exclusively devoted to the carriage of enemy troops or to the transmission of intelligence in the enemy's interest. The case is different from those dealt with by article 45, and the question is one of a service to which the ship is permanently devoted. The decision accordingly is that, so long as such service lasts, the vessel is liable to capture, even if, at the moment when an enemy cruiser searches her, she is engaged neither in the transport of troops nor in the transmission of intelligence.

As in the cases in article 45 and for the same reasons, goods found on board belonging to the owner of the vessel are also liable to condemnation.

It was proposed to treat as an enemy merchant vessel a neutral vessel making, at the time, and with the sanction of the enemy government, a voyage which she has only been permitted to make subsequently to the outbreak of hostilities or during the two preceding months. This rule would be enforced notably on neutral merchant vessels admitted by a belligerent to a service reserved in time of peace to the national marine of that belligerent—for instance, to the coasting trade. Several delegations formally rejected this proposal, so that the question thus raised remains an open one.

ART. 47. Any individual embodied in the armed forces of the enemy who is found on board a neutral merchant vessel may be made a prisoner of war, even though there be no ground for the capture of the vessel.

Individuals embodied in the armed military or naval forces of a belligerent may be on board a neutral merchant vessel when she is searched. If the vessel is subject to condemnation, the cruiser will capture her and take her to one of her own ports with the persons on board. Clearly the soldiers or sailors of the enemy state will not be set free, but will be treated as prisoners of war. Perhaps the case

will not be one for the capture of the ship—for instance, because the master was unaware of the status of an individual who had come on board as an ordinary passenger. Must the soldier or soldiers on board the vessel be set free? That does not appear admissible. The belligerent cruiser can not be compelled to set free active enemies who are physically in her power and are more dangerous than this or that contraband article. She must naturally proceed with great discretion, and must act on her own responsibility in requiring the surrender of these individuals, but the right to do so is hers; it has therefore been thought necessary to explain the point.

Chapter IV.—Destruction of Neutral Prizes.

The destruction of neutral prizes was a subject comprised in the program of the second peace conference, and on that occasion no settlement was reached. It reappeared in the program of the present conference, and this time agreement has been found possible. Such a result, which bears witness to the sincere desire of all parties to arrive at an understanding is a matter for congratulation. It has been shown once more that conflicting hard-and-fast rules do not always correspond to things as they are, and that if there be readiness to descend to particulars, and to arrive at the precise way in which the rules have been applied, it will often be found that the actual practice is very much the same, although the doctrines professed appear to be entirely in conflict. To enable two parties to agree, it is first of all necessary that they should understand each other, and this frequently is not the case. Thus it has been found that those who declared for the right to destroy neutral prizes never claimed to use this right wantonly or at every opportunity, but only by way of exception; while, on the other hand, those who maintained the principle that destruction is forbidden, admitted that the principle must give way in certain exceptional cases. It therefore became a question of reaching an understanding with regard to those exceptional cases to which, according to both views, the right to destroy should be confined. But this was not all; there was need for some guaranty against abuse in the exercise of this right; the possibility of arbitrary action in determining these exceptional cases must be limited by throwing some real responsibility upon the captor. It was at this stage that a new idea was introduced into the discussion, thanks to which it was possible to arrive at an agreement. The possibility of intervention by a court of justice will make the captor reflect before he acts, and at the same time secure reparation in cases where there was no reason for the destruction.

Such is the general spirit of the provisions of this chapter.

Art. 48. A neutral vessel which has been captured may not be destroyed by the captor; she must be taken into such port as is proper for the determination there of all questions concerning the validity of the prize.

The general principle is very simple. A neutral vessel which has been seized may not be destroyed by the captor; so much may be admitted by everyone, whatever view is taken as to the effect produced by the capture. The vessel must be taken into a port for the determination there as to the validity of the prize. A prize crew will be put on board or not, according to circumstances.

Art. 49. As an exception, a neutral vessel which has been captured by a belligerent warship, and which would be liable to condemnation, may be destroyed

if the observance of article 48 would involve danger to the safety of the warship or to the success of the operations in which she is engaged at the time.

The first condition necessary to justify the destruction of the captured vessel is that she should be liable to condemnation upon the facts of the case. If the captor can not even hope to obtain the condemnation of the vessel, how can he lay claim to the right to destroy her?

The second condition is that the observance of the general principle would involve danger to the safety of the warship or to the success of the operations in which she is engaged at the time. This is what was finally agreed upon after various solutions had been tried. It was understood that the phrase compromettre la securité was synonymous with mettre en danger le navire, and might be translated into English by: Involve danger. It is, of course, the situation at the moment when the destruction takes place which must be considered in order to decide whether the conditions are or are not fulfilled. For a danger which did not exist at the actual moment of the capture may have appeared some time afterwards.

ART. 50. Before the vessel is destroyed all persons on board must be placed in safety, and all the ship's papers and other documents which the parties interested consider relevant for the purpose of deciding on the validity of the capture must be taken on board the warship.

This provision lays down the precautions to be taken in the interests of the persons on board and of the administration of justice.

ART. 51. A captor who has destroyed a neutral vessel must, prior to any decision respecting the validity of the prize, establish that he only acted in the face of an exceptional necessity, of the nature contemplated in article 49. If he fails to do this, he must compensate the parties interested, and no examination shall be made of the question whether the capture was valid or not.

This claim gives a guaranty against the arbitrary destruction of prizes by throwing a real responsibility upon the captor who has carried out the destruction. The result is that before any decision is given respecting the validity of the prize, the captor must prove that the situation he was in was really one which fell under the head of the exceptional cases contemplated. This must be proved in proceedings to which the neutral is a party, and if the latter is not satisfied with the decision of the national prize court he may take his case to the international court. Proof to the above effect is, therefore, a condition precedent which the captor must fulfill. If he fails to do this, he must compensate the parties interested in the vessel and the cargo, and the question whether the capture was valid or not will not be gone into. In this way a real sanction is provided in respect of the obligation not to destroy a prize except in particular cases, the sanction taking the form of a fine inflicted on the captor. If, on the other hand, this proof is given, the prize procedure follows the usual course; if the prize is declared valid, no compensation is due; if it is declared void, the parties interested have a right to be compensated. Resort to the international court can only be made after the decision of the prize court has been given on the whole matter, and not immediately after the preliminary question has been decided.

ART. 52. If the capture of a neutral vessel is subsequently held to be invalid, though the act of destruction has been held to have been justifiable, the captor must pay compensation to the parties interested, in place of the restitution to which they would have been entitled.

ART. 53. If neutral goods not liable to condemnation have been destroyed with the vessel, the owner of such goods is entitled to compensation.

Supposing a vessel which has been destroyed carried neutral goods not liable to condemnation: the owner of such goods has, in every case, a right to compensation; that is, without there being occasion to distinguish between cases where the destruction was or was not justified. This is equitable and a further guaranty against arbitrary destruction.

ART. 54. The captor has the right to demand the handing over, or to proceed himself to the destruction, of any goods liable to condemnation found on board a vessel not herself liable to condemnation, provided that the circumstances are such as would, under article 49, justify the destruction of a vessel herself liable to condemnation. The captor must enter the goods surrendered or destroyed in the log book of the vessel stopped, and must obtain duly certified copies of all relevant papers. When the goods have been handed over or destroyed and the formalities duly carried out, the master must be allowed to continue his voyage.

The provisions of articles 51 and 52 respecting the obligations of a captor who has destroyed a neutral vessel are applicable.

A cruiser encounters a neutral merchant vessel carrying contraband in a proportion less than that specified in article 40. The captain may put a prize crew on board the vessel and take her into a port for adjudication. He may, in conformity with the provisions of article 44, agree to the handing over of the contraband if offered by the vessel stopped. But what is to happen if neither of these solutions is reached? The vessel stopped does not offer to hand over the contraband, and the cruiser is not in a position to take the vessel into a national port. Is the cruiser obliged to let the neutral vessel go with the contraband on board? To require this seemed going too far, at least in certain exceptional circumstances. These circumstances are in fact the same as would have justified the destruction of the vessel, had she been liable to condemnation. In such a case, the cruiser may demand the handing over, or proceed to the destruction, of the goods liable to condemnation. The reasons for which the right to destroy the vessel has been recognized may justify the destruction of the contraband goods, the more so as the considerations of humanity which can be adduced against the destruction of a vessel do not in this case apply. Against arbitrary demands by the cruiser there are the same guaranties as those which made it possible to recognize the right to destroy the vessel. The captor must, as a preliminary, prove that he was really faced by the exceptional circumstances specified; failing this, he is condemned to pay the value of the goods handed over or destroyed, and the question whether they were contraband or not will not be gone into.

The article prescribes certain formalities which are necessary to establish the facts of the case and to enable the prize court to adjudicate.

Of course, when once the goods have been handed over or destroyed and the formalities carried out, the vessel which has been stopped must be left free to continue her voyage.

CHAPTER V.—TRANSFER TO A NEUTRAL FLAG.

An enemy merchant vessel is liable to capture, whereas a neutral merchant vessel is immune. It can therefore be readily understood that a belligerent cruiser encountering a merchant vessel which lays claim to neutral nationality has to inquire whether such nationality

has been acquired legitimately or merely in order to shield the vessel from the risks to which she would have been exposed had she retained her former nationality. This question naturally arises when the transfer has taken place a comparatively short time before the moment at which the ship is searched, whether the actual date be before or after the outbreak of hostilities. The answer will be different according as the question is looked at from the point of view of commercial or belligerent interests. Fortunately, rules have been agreed upon which conciliate both these interests as far as possible, and which at the same time tell belligerents and neutral commerce what their position is.

ART. 55. The transfer of an enemy vessel to a neutral flag, effected before the outbreak of hostilities, is valid, unless it is proved that such transfer was made in order to evade the consequences to which an enemy vessel, as such, is exposed. There is, however, a presumption, if the bill of sale is not on board a vessel which has lost her belligerent nationality less than sixty days before the outbreak of hostilities, that the transfer is void. This presumption may be rebutted.

Where the transfer was effected more than thirty days before the outbreak of hostilities, there is an absolute presumption that it is valid if it is unconditional, complete, and in conformity with the laws of the countries concerned, and if its effect is such that neither the control of, nor the profits earned by, the vessel remain in the same hands as before the transfer. If, however, the vessel lost her belligerent nationality less than sixty days before the outbreak of hostilities, and if the bill of sale is not on board, the capture of the vessel gives no right to damages.

The general rule laid down in the first paragraph is that the transfer of an enemy vessel to a neutral flag is valid, assuming, of course, that the ordinary requirements of the law have been fulfilled. It is upon the captor, if he wishes to have the transfer annulled, that the onus lies of proving that its object was to evade the consequences entailed by the war in prospect. There is one case which is treated as suspicious, that, namely, in which the bill of sale is not on board when the ship has changed her nationality less than 60 days before the outbreak of hostilities. The presumption of validity which has been set up by the first paragraph in favor of the vessel is then replaced by a presumption in favor of the captor. It is presumed that the transfer is void, but the presumption may be rebutted. With a view to such rebuttal, proof may be given that the transfer was not effected in order to evade the consequences of the war; it is unnecessary to add that the ordinary requirements of the law must have been fulfilled.

It was thought desirable to give to commerce a guaranty that the right of treating a transfer as void on the ground that it was effected in order to evade the consequences of war should not extend too far, and should not cover too long a period. Consequently, if the transfer has been effected more than 30 days before the outbreak of hostilities, it can not be impeached on that ground alone, and it is regarded as unquestionably valid if it has been made under conditions which show that it is genuine and final. These conditions ars as follows: The transfer must be unconditional, complete, and in conformity with the laws of the countries concerned, and its effect must be such that both the control of, and the profits earned by, the vessel pass into other hands. When once these conditions are proved to exist, the captor is not allowed to set up the contention that the vender foresaw the war in which his country was about to be involved, and wished by the sale to shield himself from the

risks to which a state of war would have exposed him in respect of the vessels he was transferring. Even in this case, however, when a vessel is encountered by a cruiser and her bill of sale is not on board, she may be captured if a change of nationality has taken place less than 60 days before the outbreak of hostilities; that circumstance has made her suspect. But if before the prize court the proof required by the second paragraph is adduced, she must be released, though she can not claim compensation, inasmuch as there was good reason for capturing her.

ART. 56. The transfer of an enemy vessel to a neutral flag effected after the outbreak of hostilities is void unless it is proved that such transfer was not made in order to evade the consequences to which an enemy vessel, as such, is exposed.

Provided that there is an absolute presumption that a transfer is void—

(1) If the transfer has been made during a voyage or in a blockaded port.

(2) If a right to repurchase or recover the vessel is reserved to the vender.

(3) If the requirements of the municipal law governing the right to fly the flag under which the vessel is sailing have not been fulfilled.

The rule respecting transfers made after the outbreak of hostilites is more simple. Such a transfer is only valid if it is proved that its object was not to evade the consequences to which an enemy vessel, as such, is exposed. The rule accepted in respect of transfers made before the outbreak of hostilities is inverted. In that case there is a presumption that the transfer is valid; in the present, that it is void—provided always, that proof to the contrary may be given For instance, it might be proved that the transfer had taken place by inheritance.

Article 56 recites cases in which the presumption that the transfer is void is absolute, for reasons which can be readily understood. In the first case the connection between the transfer and the war risk run by the vessel is evident. In the second, the transferee is a mere man of straw, who is to be treated as owner during a dangerous period, after which the vender will recover possession of his vessel. Lastly, the third case might strictly be regarded as already provided for, since a vessel which lays claim to neutral nationality must naturally prove that she has a right to it.

At one time provision was made in this article for the case of a vessel which was retained, after the transfer, in the trade in which she had previously been engaged. Such a circumstance is in the highest degree suspicious; the transfer has a fictitious appearance, inasmuch as nothing has changed in regard to the vessel's trade. This would apply, for instance, if a vessel were running on the same line before and after the transfer. It was, however, objected that to set up an absolute presumption would sometimes be too severe, and that certain kinds of vessels, as, for example, tank ships, could, on account of their build, engage only in a certain definite trade. To meet this objection the word "route" was then added, so that it would have been necessary that the vessel should be engaged in the same trade and on the same route; it was thought that in this way the above contention would have been satisfactorily met. However, the suppression of this case from the list being insisted on, it was agreed to eliminate it. Consequently, a transfer of this character now falls within the general rule; it is certainly presumed to be void, but the presumption may be rebutted.

Chapter VI.—Enemy Character.

The rule in the declaration of Paris that "the neutral flag covers enemy goods, with the exception of contraband of war," corresponds so closely with the advance of civilization and has taken so firm a hold on the public mind that it is impossible, in the face of so extensive an application, to avoid seeing in that rule the embodiment of a principle of the common law of nations which can no longer be disputed. The determination of the neutral or enemy character of merchant vessels accordingly decides not only the question of the validity of their capture, but also the fate of the noncontraband goods on board. A similar general observation may be made with reference to the neutral or enemy character of goods. No one thinks of contesting to-day the principle according to which "neutral goods, with the exception of contraband of war, are not liable to capture on board an enemy ship." It is, therefore, only in respect of goods found on board an enemy ship that the question whether they are neutral or enemy property arises.

The determination of what constitutes neutral or enemy character thus appears as a development of the two principles laid down in 1856, or rather as a means of securing their just application in practice.

The advantage of deducing from the practices of different countries some clear and simple rules on this subject may be said to need no demonstration. The uncertainty as to the risk of capture, if it does not put an end to trade, is at least the most serious of hindrances to its continuance. A trader ought to know the risks which he runs in putting his goods on board this or that ship, while the underwriter, if he does not know the extent of those risks, is obliged to charge war premiums, which are often either excessive or else inadequate.

The rules which form this chapter are, unfortunately, incomplete. Certain important points had to be laid aside, as has been already observed in the introductory explanations and as will be further explained below.

Art. 57. Subject to the provisions respecting transfer to another flag, the neutral or enemy character of a vessel is determined by the flag which she is entitled to fly.

The case where a neutral vessel is engaged in a trade which is closed in time of peace remains outside the scope of this rule and is in no wise affected by it.

The principle, therefore, is that the neutral or enemy character of a vessel is determined by the flag which she is entitled to fly. It is a simple rule which appears satisfactorily to meet the special case of ships, as distinguished from that of other movable property, and notably of the cargo. From more than one point of view ships may be said to possess an individuality; notably, they have a nationality, a national character. This attribute of nationality finds visible expression in the right to fly a flag. It has the effect of placing ships under the protection and control of the State to which they belong. It makes them amenable to the sovereignty and to the laws of that State and liable to requisition should the occasion arise. Here is the surest test of whether a vessel is really a unit in the merchant marine of a country, and here, therefore, the best test by which to decide whether her character is neutral or enemy. It is, moreover, preferable to rely exclusively upon this test and to discard all considerations connected with the personal status of the owner.

The text makes use of the words "the flag which the vessel is entitled to fly;" that expression means, of course, the flag under which, whether she is actually flying it or not, the vessel is entitled to sail according to the municipal laws which govern that right.

Article 57 safeguards the provisions respecting transfer to another flag, as to which it is sufficient to refer to articles 55 and 56; a vessel may very well have the right to fly a neutral flag, as far as the law of the country to which she claims to belong is concerned, but may be treated as an enemy vessel by a belligerent, because the transfer in virtue of which she has hoisted the neutral flag is annulled by article 55 or article 56.

Lastly, the question was raised whether a vessel loses her neutral character when she is engaged in a trade which the enemy, prior to the war, reserved exclusively for his national vessels; but as has been observed above in connection with the subject of unneutral service, no agreement was reached, and the question remains an open one, as the second paragraph of article 57 is careful to explain.

ART. 58. The neutral or enemy character of goods found on board an enemy vessel is determined by the neutral or enemy character of the owner.

Unlike ships, goods have no individuality of their own; their neutral or enemy character is made to depend upon the personal status of their owner. This opinion prevailed after an exhaustive study of different views, which inclined toward reliance on the country of origin of the goods, the status of the person at whose risk they are, of the consignee, or of the consignor. The test adopted in article 58 appears, moreover, to be in conformity with the terms of the declaration of Paris, as also with those of the convention of The Hague of the 18th October, 1907, relative to the establishment of an international prize court, where the expression "neutral or enemy property" is used. (Arts. 1, 3, 4, 8.)

But it can not be concealed that article 58 solves no more than a part of the problem, and that the easier part; it is the neutral or enemy character of the owner which determines the character of the goods, but what is to determine the neutral or enemy character of the owner? On this point nothing is said, because it was found impossible to arrive at an agreement. Opinions were divided between domicile and nationality; no useful purpose will be served by reproducing here the arguments adduced to support the two positions. It was hoped that a compromise might have been reached on the basis of a clause to the following effect:

The neutral or enemy character of goods found on board an enemy vessel is determined by the neutral or enemy nationality of their owner, or, if he is of no nationality or of double nationality (i. e., both neutral and enemy), by his domicile in a neutral or enemy country;

Provided that goods belonging to a limited liability or joint stock company are considered as neutral or enemy according as the company has its headquarters in a neutral or enemy country.

But there was no unanimity.

ART. 59. In the absence of proof of the neutral character of goods found on board an enemy vessel, they are presumed to be enemy goods.

Article 59 gives expression to the traditional rule according to which goods found on board an enemy vessel are, failing proof to the contrary, presumed to be enemy goods; this is merely a simple pre-

sumption, which leaves to the claimant the right, but at the same time the onus, of proving his title.

ART. 60. Enemy goods on board an enemy vessel retain their enemy character until they reach their destination, notwithstanding any transfer effected after the outbreak of hostilities while the goods are being forwarded.

If, however, prior to the capture, a former neutral owner exercises, on the bankruptcy of an existing enemy owner, a recognized legal right to recover the goods, they regain their neutral character.

This provision contemplates the case where goods which were enemy property at the time of dispatch have been the subject of a sale or transfer during the course of the voyage. The ease with which enemy goods might secure protection from the exercise of the right of capture by means of a sale which is made subject to a reconveyance of the property on arrival has always led to a refusal to recognize such transfers. The enemy character subsists.

With regard to the moment from which goods must be considered to acquire and retain the enemy character of their owner, the text has been inspired by the same spirit of equity as governed the convention of The Hague, relative to the status of merchant vessels on the outbreak of hostilities, and by the same desire to protect mercantile operations undertaken in the security of a time of peace. It is only when the transfer takes place after the outbreak of hostilities that it is, so far as the loss of enemy character is concerned, inoperative until the arrival of the goods in question. The date which is taken into consideration here is that of the transfer, and not of the departure of the vessel. For, while the vessel which started before the war began, and remains, perhaps, unaware of the outbreak of hostilities, may enjoy on this account some degree of exemption, the goods may nevertheless possess enemy character; the enemy owner of these goods is in a position to be aware of the state of war, and it is for that very reason that he is likely to seek to evade its consequences.

It was, however, thought right to add what is, if not a limitation, at least a complement agreed to be necessary. In a great number of countries an unpaid vendor has, in the event of the bankruptcy of the buyer, a recognized legal right to recover the goods which have already become the property of the buyer but not yet reached him (stoppage in transitu). In such a case the sale is canceled, and, in consequence of the recovery, the vendor obtains the goods again and is not deemed ever to have ceased to be the owner. This right gives to neutral commerce, in the case of a genuine bankruptcy, a protection too valuable to be sacrificed, and the second paragraph of article 60 is intended to preserve it.

CHAPTER VII.—CONVOY.

The practice of convoy has, in the past, occasionally given rise to grave difficulties and even to conflict. It is therefore satisfactory to be able to record the agreement which has been reached upon this subject.

ART. 61. Neutral vessels under national convoy are exempt from search. The commander of a convoy gives, in writing, at the request of the commander of a belligerent warship, all information as to the character of the vessels and their cargoes which could be obtained by search.

The principle laid down is simple; a neutral vessel under the convoy of a warship of her own nationality is exempt from search. The reason for this rule is that the belligerent cruiser ought to be able to find in the assurances of the commander of the convoy as good a guaranty as would be afforded by the exercise of the right of search itself; in fact, she can not call in question the assurances given by the official representative of a neutral government without displaying a lack of international courtesy. If neutral governments allow belligerents to search vessels sailing under their flag, it is because they do not wish to be responsible for the supervision of such vessels, and therefore allow belligerents to protect themselves. The situation is altered when a neutral government consents to undertake that responsibility; the right of search has no longer the same importance.

But it follows from the explanation of the rule respecting convoy that the neutral government undertakes to afford the belligerents every guaranty that the vessels convoyed shall not take advantage of the protection accorded to them in order to do anything inconsistent with their neutraliy, as, for example, to carry contraband, render unneutral service to the belligerent, or attempt to break blockade. There is need, therefore, that a genuine supervision should be exercised from the outset over the vessels which are to be convoyed; and that supervision must be continued throughout the voyage. The government must act with vigilance so as to prevent all abuse of the right of convoy, and must give to the officer who is put in command of a convoy precise instructions to this effect.

A belligerent cruiser encounters a convoy; she communicates with the commander of the convoy, who must, at her request, give in writing all relevant information about the vessels under his protection. A written declaration is required, because it prevents all ambiguities and misunderstandings, and because it pledges to a greater extent the responsibility of the commander. The object of such a declaration is to make search unnecessary by the mere fact of giving to the cruiser the information which the search itself would have supplied.

ART. 62. If the commander of the belligerent warship has reason to suspect that the confidence of the commander of the convoy has been abused, he communicates his suspicions to him. In such a case it is for the commander of the convoy alone to investigate the matter. He must record the result of such investigation in a report, of which a copy is handed to the officer of the warship. If, in the opinion of the commander of the convoy, the facts shown in the report justify the capture of one or more vessels, the protection of the convoy must be withdrawn from such vessels.

In the majority of cases the cruiser will be satisfied with the declaration which the commander of the convoy will have given to her, but she may have serious grounds for believing that the confidence of the commander has been abused, as, for example, that a ship under convoy of which the papers are apparently in order and exhibit nothing suspicious is, in fact, carrying contraband cleverly concealed. The cruiser may, in such a case, communicate her suspicions to the commander of the convoy, and an investigation may be considered necessary. If so, it will be made by the commander of the convoy, since it is he alone who exercises authority over the vessels placed under his protection. It appeared, nevertheless, that much difficulty might often be avoided if the belligerent were allowed to be present at this investigation; otherwise he might still suspect, if not the good faith,

at last the vigilance and perspicacity of the person who conducted the search. But it was not thought that an obligation to allow the officer of the cruiser to be present at the investigation should be imposed upon the commander of the convoy. He must act as he thinks best; if he agrees to the presence of an officer of the cruiser, it will be as an act of courtesy or good policy. He must in every case draw up a report of the investigation and give a copy to the officer of the cruiser.

Differences of opinion may occur between the two officers, particularly in relation to conditional contraband. The character of a port to which a cargo of corn is destined may be disputed. Is it an ordinary commercial port, or is it a port which serves as a base of supply for the armed forces? The situation which arises out of the mere fact of the convoy must in such a case be respected. The officer of the cruiser can do no more than make his protest, and the difficulty must be settled through the diplomatic channel.

The situation is altogether different if a vessel under convoy is found beyond the possibility of dispute to be carrying contraband. The vessel has no longer a right to protection, since the condition upon which such protection was granted has not been fulfilled. Besides deceiving her own government, she has tried to deceive the belligerent. She must therefore be treated as a neutral merchant vessel encountered in the ordinary way and searched by a belligerent cruiser. She can not complain at being exposed to such rigorous treatment, since there is in her case an aggravation of the offense committed by a carrier of contraband.

Chapter VIII.—Resistance to Search.

The subject treated in this chapter was not mentioned in the program submitted by the British Government in February, 1908, but it is intimately connected with several of the questions in that program, and thus attracted the attention of the conference in the course of its deliberations; and it was thought necessary to frame a rule upon it, the drafting of which presented little difficulty.

A belligerent cruiser encounters a merchant vessel and summons her to stop in order that she may be searched. The vessel summoned does not stop, but tries to avoid the search by flight. The cruiser may employ force to stop her, and the merchant vessel, if she is damaged or sunk, has no right to complain, seeing that she has failed to comply with an obligation imposed upon her by the law of nations.

If the vessel is stopped, and it is shown that it was only in order to escape the inconvenience of being searched that recourse was had to flight, and that beyond this she had done nothing contrary to neutrality, she will not be punished for her attempt at flight. If, on the other hand, it is established that the vessel has contraband on board, or that she has in some way or other failed to comply with her duty as a neutral, she will suffer the consequences of her infraction of neutrality, but in this case as in the last, she will not undergo any punishment for her attempt at flight. Expression was given to the contrary view, namely, that a ship should be punished for an obvious attempt at flight as much as for forcible resistance. It was suggested that the prospect of having the escaping vessel condemned as good prize would

influence the captain of the cruiser to do his best to spare her. But in the end this view did not prevail.

ART. 63. Forcible resistance to the legitimate exercise of the right of stoppage, search, and capture involves in all cases the condemnation of the vessel. The cargo is liable to the same treatment as the cargo of an enemy vessel. Goods belonging to the master or owner of the vessel are treated as enemy goods.

The situation is different if forcible resistance is made to any legitimate action by the cruiser. The vessel commits an act of hostility and must from that moment be treated as an enemy vessel; she will therefore be subject to condemnation, although the search may not have shown that anything contrary to neutrality had been done. So far no difficulty seems to arise.

What must be decided with regard to the cargo? The rule which appeared to be the best is that according to which the cargo will be treated like the cargo on board an enemy vessel. This assimilation involves the following consequences. A neutral vessel which has offered resistance becomes an enemy vessel and the goods on board are presumed to be enemy goods. Neutrals who are interested may claim their property, in accordance with article 3 of the declaration of Paris, but enemy goods will be condemned, since the rule that the flag covers the goods can not be adduced, because the captured vessel on board which they are found is considered to be an enemy vessel. It will be noticed that the right to claim the goods is open to all neutrals, even to those whose nationality is that of the captured vessel; it would seem to be an excess of severity to make such persons suffer for the action of the master. There is, however, an exception as regards the goods which belong to the owner of the vessel; it seems natural that he should bear the consequences of the acts of his agent. His property on board the vessel is therefore treated as enemy goods. A fortiori the same rule applies to the goods belonging to the master.

CHAPTER IX.—COMPENSATION.

This chapter is of very general application, inasmuch as the provisions which it contains are operative in all the numerous cases in which a cruiser may capture a vessel or goods.

ART. 64. If the capture of a vessel or of goods is not upheld by the prize court, or if the prize is released without any judgment being given, the parties interested have the right to compensation, unless there were good reasons for capturing the vessel or goods.

A cruiser has captured a neutral vessel on the ground, for example, of carriage of contraband or breach of blockade. The prize court releases the vessel, declaring the capture to be void. This decision alone is evidently not enough to indemnify the parties interested for the loss incurred in consequence of the capture, and this loss may have been considerable, since the vessel has been during a period, which may often be a very long one, prevented from engaging in her ordinary trade. May these parties claim to be compensated for this injury? Reason requires that the affrmative answer should be given, if the injury has been undeserved—that is to say, if the capture was not brought about by some fault of the parties. It may, indeed, happen that there was good reason for the capture, because the master of the vessel searched did not produce evidence which ought in the ordinary course to have been available and which was only furnished at a later stage. In such a case it would be unjust that compensation

should be awarded. On the other hand, if the cruiser has really been at fault, if the vessel has been captured when there were not good reasons for doing so, it is just that compensation should be granted.

It may also happen that a vessel which has been captured and taken into a port is released by the action of the executive without the intervention of a prize court. The existing practice, under such circumstances, is not uniform. In some countries the prize court has no jurisdiction, unless there is a question of validating a capture, and can not adjudicate on a claim for compensation based upon the ground that the capture would have been held unjustifiable; in other countries the prize court would have jurisdiction to entertain a claim of this kind. On this point, therefore, there is a difference which is not altogether equitable, and it is desirable to lay down a rule which will produce the same result in all countries. It is reasonable that every capture effected without good reasons should give to the parties interested a right to compensation without its being necessary to draw any distinction between the cases in which the capture has or has not been followed by a decision of a prize court; and this argument is all the more forcible when the capture may have so little justification that the vessel is released by the action of the executive. A provision in general terms has therefore been adopted, which is capable of covering all cases of capture.

It should be observed that in the text no reference is made to the question whether the national tribunals are competent to adjudicate on a claim for compensation. In cases where proceedings are taken against the property captured no doubt upon this point can be entertained. In the course of the proceedings taken to determine the validity of a capture the parties interested have the opportunity of making good their right to compensation, and if the national tribunal does not give them satisfaction they can apply to the international prize court. If, on the other hand, the action of the belligerent has been confined to the capture it is the law of the belligerent captor which decides whether there are tribunals competent to entertain a demand for compensation; and if so, what are those tribunals? The international court has not, according to the convention of The Hague, any jurisdiction in such a case. From an international point of view the diplomatic channel is the only one available for making good such a claim, whether the cause for complaint is founded on a decision actually delivered or on the absence of any tribunal having jurisdiction to entertain it.

The question was raised as to whether it was necessary to draw a distinction between the direct and the indirect losses suffered by vessel or goods. The best course appeared to be to leave the prize court free to estimate the amount of compensation due, which will vary according to the circumstances and can not be laid down in advance in rules going into minute details.

For the sake of simplicity mention has only been made of the vessel, but what has been said applies, of course, to cargo captured and afterwards released. Innocent goods on board a vessel which has been captured suffer, in the same way, all the inconvenience which attends the capture of the vessel; but if there was good cause for capturing the vessel, whether the capture has subsequently been held to be valid or not, the owners of the cargo have no right to compensation.

It is perhaps useful to indicate certain cases in which the capture of a vessel would be justified, whatever might be the ultimate decision of the prize court. Notably, there is the case where some or all of the ship's papers have been thrown overboard, suppressed, or intentionally destroyed on the initiative of the master or one of the crew or passengers. There is in such a case an element which will justify any suspicion and afford an excuse for capturing the vessel, subject to the master's ability to account for his action before the prize court. Even if the court should accept the explanation given and should not find any reason for condemnation, the parties interested can not hope to recover compensation.

An analogous case would be that in which there were found on board two sets of papers, or false or forged papers, if this irregularity were connected with circumstances calculated to contribute to the capture of the vessel.

It appeared sufficient that these cases in which there would be a reasonable excuse for the capture should be mentioned in the present report, and should not be made the object of express provisions, since otherwise the mention of these two particular cases might have led to the supposition that they were the only cases in which a capture could be justified.

Such, then, are the principles of international law to which the naval conference has sought to give recognition as being fitted to regulate in practice the intercourse of nations on certain important questions in regard to which precise rules have hitherto been wanting. The conference has thus taken up the work of codification begun by the declaration of Paris of 1856. It has worked in the same spirit as the second peace conference, and, taking advantage of the labors accomplished at The Hague, it has been able to solve some of the problems which, owing to the lack of time, that conference was compelled to leave unsolved. Let us hope that it may be possible to say that those who have drawn up the declaration of London of 1909 are not altogether unworthy of their predecessors of 1856 and 1907.

Final Provisions.

These provisions have reference to various questions relating to the effect of the declaration, its ratification, its coming into force, its denunciation, and the accession of unrepresented powers.

Art. 65. The provisions of the present declaration must be treated as a whole and can not be separated.

This article is of great importance and is in conformity with that which was adopted in the declaration of Paris.

The rules contained in the present declaration relate to matters of great importance and great diversity. They have not all been accepted with the same degree of eagerness by all the delegations. Concessions have been made on one point in consideration of concessions obtained on another. The whole, all things considered, has been recognized as satisfactory, and a legitimate expectation would be falsified if one power might make reservations on a rule to which another power attached particular importance.

Art. 66. The signatory powers undertake to insure the mutual observance of the rules contained in the present declaration in any war in which all the belligerents are parties thereto. They will therefore issue the necessary instructions to their authorities and to their armed forces, and will take such measures as

may be required in order to insure that it will be applied by their courts, and more particularly by their prize courts.

According to the engagement resulting from this article, the declaration applies to the relations between the signatory powers when the belligerents are likewise parties to the declaration.

It will be the duty of each power to take the measures necessary to insure the observance of the declaration. These measures may vary in different countries and may or may not involve the intervention of the legislature. The matter is one of national legal requirements.

It should be observed that neutral powers also may find themselves in a position of having to give instructions to their authorities, notably to the commanders of convoys, as previously explained.

ART. 67. The present declaration shall be ratified as soon as possible.

The ratifications shall be deposited in London.

The first deposit of ratifications shall be recorded in a protocol signed by the representatives of the powers taking part therein, and by His Britannic Majesty's principal secretary of state for foreign affairs.

The subsequent deposits of ratifications shall be made by means of a written notification addressed to the British Government, and accompanied by the instrument of ratification.

A duly certified copy of the protocol relating to the first deposit of ratifications, and of the notifications mentioned in the preceding paragraph as well as of the instruments of ratification which accompany them, shall be immediately sent by the British Government, through the diplomatic channel, to the signatory powers. The said Government shall, in the cases contemplated in the preceding paragraph, inform them at the same time of the date on which it received the notification.

This provision, of a purely formal character, needs no explanation. The wording adopted at The Hague by the second peace conference has been borrowed.

ART. 68. The present declaration shall take effect, in the case of the powers which were parties to the first deposit of ratifications, sixty days after the date of the protocol recording such deposit, and in the case of the powers which shall ratify subsequently, sixty days after the notification of their ratification shall have been received by the British Government.

ART. 69. In the event of one of the signatory powers wishing to denounce the present declaration, such denunciation can only be made to take effect at the end of a period of twelve years beginning sixty days after the first deposit of ratifications, and after that time, at the end of successive periods of six years, of which the first will begin at the end of the period of twelve years.

Such denunciation must be notified in writing, at least one year in advance, to the British Government, which shall inform all the other powers.

It will only operate in respect of the denouncing power.

It follows implicitly from article 69 that the declaration is of indefinite duration. The periods after which denunciation is allowed have been fixed on the analogy of the convention for the establishment of an international prize court.

ART. 70. The powers represented at the London naval conference attach particular importance to the general recognition of the rules which they have adopted, and therefore express the hope that the powers which were not represented there will accede to the present declaration. They request the British Government to invite them to do so.

A power which desires to accede shall notify its intention in writing to the British Government, and transmit simultaneously the act of accession, which will be deposited in the archives of the said Government.

The said Government shall forthwith transmit to all the other powers a duly certified copy of the notification, together with the act of accession, and communicate the date on which such notification was received. The accession takes effect sixty days after such date.

In respect of all matters concerning this declaration, acceding powers shall be on the same footing as the signatory powers.

The declaration of Paris also contained an invitation to the powers which were not represented to accede to the declaration. The official invitation in this case, instead of being made individually by each of the powers represented at the conference, may more conveniently be made by Great Britain acting in the name of all the powers.

The procedure for accession is very simple. The fact that the acceding powers are placed on the same footing in every respect as the signatory powers of course involves compliance by the former with article 65. A power can accede only to the whole, but not merely to a part, of the declaration.

ART. 71. The present declaration, which bears the date of the 26th February, 1909, may be signed in London up till the 30th June, 1909, by the plenipotentiaries of the powers represented at the naval conference.

As at The Hague, account has been taken of the situation of certain powers the representatives of which may not be in a position to sign the declaration at once, but which desire, nevertheless, to be considered as signatory, and not as acceding, powers.

It is scarcely necessary to say that the plenipotentiaries of the powers referred to in article 71 are not necessarily those who were, as such, delegates at the naval conference.

In faith whereof the plenipotentiaries have signed the present declaration and have thereto affixed their seals.

Done at London the twenty-sixth day of February, one thousand nine hundred and nine, in a single original, which shall remain deposited in the archives of the British Government, and of which duly certified copies shall be sent through the diplomatic channel to the powers represented at the naval conference.

[Translation.]

[The final protocol was signed in the French language only.]

FINAL PROTOCOL OF THE LONDON NAVAL CONFERENCE.

The London Naval Conference, called together by His Britannic Majesty's Government, assembled at the foreign office on the 4th December, 1908, with the object of laying down the generally recognized principles of international law in accordance with Article 7 of the convention signed at The Hague on the 18th October, 1907, for the establishment of an international prize court.

The powers enumerated below took part in this conference, at which they appointed as their representatives the following delegates:

Germany: M. Kriege, privy councillor of legation and legal adviser to the department of foreign affairs, member of the permanent court of arbitration, plenipotentiary delegate; Captain Starke, naval attaché to the imperial embassy at Paris, naval delegate; M. Göppert, councillor of legation and assistant councillor to the department for foreign affairs, legal delegate; Commander von Bülow, second naval delegate.

The United States of America: Rear-Admiral Charles H. Stockton, plenipotentiary delegate; Mr. George Grafton Wilson, professor at Brown University, lecturer on international law at the Naval War College and at Harvard University, plenipotentiary delegate.

Austria-Hungary: His Excellency M. Constantin Théodore Dumba, privy councillor of His Imperial and Royal Apostolic Majesty, envoy extraordinary and minister plenipotentiary, plenipotentiary delegate; Rear-Admiral Baron Léopold de Jedina-Palombini, naval delegate; Baron Alexandre Hold de Ferneck, attaché to the ministry of the imperial and royal household and of foreign affairs, professor on the staff of the University of Vienna, assistant delegate.

Spain: M. Gabriel Maura y Gamazo, Count de la Mortera, member of Parliament, plenipotentiary delegate; Capt. R. Estrada, naval delegate.

France: M. Louis Renault, minister plenipotentiary, professor at the Faculty of Law at Paris, legal adviser to the ministry of foreign affairs, member of the Institute of France, member of the permanent court of arbitration, plenipotentiary delegate; Rear-Admiral Le Bris, technical delegate; M. H. Fromageot, barrister at the court of appeal in Paris, technical delegate; Count de Manneville, secretary of embassy of the first class, delegate.

Great Britain: The Earl of Desart, K. C. B., king's proctor, plenipotentiary delegate; Rear-Admiral Sir Charles Ottley, K. C. M. G., M. V. O., R. N., delegate; Rear-Admiral Edmond J. W. Slade, M. V. O., R. N., delegate; Mr. Eyre Crowe, C. B., delegate; Mr. Cecil Hurst, C. B., delegate.

Italy: M. Guido Fusinato, councillor of state, member of Parliament, ex-minister of public instruction, member of the permanent court of arbitration, plenipotentiary delegate; Capt. Count Giovanni Lovatelli, naval delegate; M. Arturo Ricci-Busatti, councillor of legation, head of the legal department of the ministry for foreign affairs, assistant delegate.

Japan: Vice-Admiral Baron Toshiatsu Sakamoto, head of the naval education department, plenipotentiary delegate; M. Enjiro Yamaza, councillor of the imperial embassy in London, plenipotentiary delegate; Capt. Sojiro Tochinai, naval attaché at the imperial embassy in London, naval delegate; M. Tadao Yamakawa, councillor to the imperial ministry of marine, technical delegate; M. Sakutaro Tachi, professor at the Imperial University of Tokyo, technical delegate; M. Michikazu Matsuda, second secretary at the imperial legation at Brussels, technical delegate.

Netherlands: Vice-Admiral Jonkheer J. A. Roëll, A. D. C., on special service to Her Majesty the Queen, ex-minister of marine, plenipotentiary delegate; Jonkheer L. H. Ruyssenaers, envoy extraordinary and minister plenipotentiary, ex-secretary-general of the permanent court of arbitration, plenipotentiary delegate; First Lieut. H. G. Surie, naval delegate.

Russia: Baron Taube, doctor of laws, councillor to the imperial ministry of foreign affairs, professor of international law at the University of St. Petersburg, plenipotentiary delegate; Captain Behr, naval attaché in London, naval delegate; Colonel of the Admiralty Ovtchinnikow, professor of international law at the naval academy, naval delegate; Baron Nolde, official of the sixth class for special missions attached to the minister for foreign affairs, professor of international law at the Polytechnic Institute of St. Petersburg, technical delegate; M. Linden, head of department at the imperial ministry of trade and commerce, technical delegate.

In a series of sittings held from the 4th December, 1908, to the 26th February, signature by the plenipotentiaries the declaration concerning the laws of naval war, the text of which is annexed to the present protocol.

Furthermore, the following wish has been recorded by the delegates of those powers which have signed or expressed the intention of signing the convention 1909, the conference has drawn up for of The Hague of the 18th October, 1907, for the establishment of an international prize court:

The delegates of the powers represented at the naval conference which have signed or expressed the intention of signing the convention of The Hague of the 18th October, 1907, for the establishment of an international prize court, having regard to the difficulties of a constitutional nature which, in some States, stand in the way of the ratification of that convention in its present form, agree to call the attention of their respective Governments to the advantage of concluding an arrangement under which such States would have the power, at the time of depositing their ratifications, to add thereto a reservation to the effect that resort to the international prize court in respect of decisions of their national tribunals shall take the form of a direct claim for compensation, provided always that the effect of this reservation shall not be such as to impair the rights secured under the said convention either to individuals or to their governments, and that the terms of the reservation shall form the subject of a subsequent understanding between the powers signatory of that convention.

In faith whereof the plenipotentiaries and the delegates representing those plenipotentiaries who have already left London have signed the present protocol.

Done at London the twenty-sixth day of February, one thousand nine hundred and nine, in a single original, which shall be deposited in the archives of the British Government and of which duly certified copies shall be sent through the diplomatic channel to the powers represented at the naval conference.

For Germany:

KRIEGE.

For the United States of America:

C. H. STOCKTON.
GEORGE GRAFTON WILSON.

For Austria-Hungary:

C. DUMBA.

For Spain:

RAMON ESTRADA.

For France:

L. RENAULT.

For Great Britain:

DESART.

For Italy:

GIOVANNI LOVATELLI.

For Japan:

T. SAKAMOTO.
E. YAMAZA.

For the Netherlands:

J. A. ROELL.
L. H. RUYSSENAERS.

For Russia:

F. BEHR.

CALL OF CONFERENCE BY GREAT BRITAIN.

BRITISH EMBASSY, *March 27, 1908.*

The Hon. ELIHU ROOT, *etc., etc., etc.*

SIR: The draft convention for the establishment of an international court of appeal in matters of prize which formed annex 12 to the final act of the second peace conference has been under the consideration of His Majesty's Government.

Article 7 of the convention provides that, in the absence of treaty stipulations applicable to the case, the court is to decide the appeals that come before it in accordance with the rules of international law, or if no generally recognized rules exist, in accordance with the general principles of justice and equity.

The discussions which took place at The Hague during the recent conference showed that on various questions connected with maritime war divergent views and practices prevailed among the nations of the world. Upon some of these subjects an agreement was reached, but on others it was not found possible, within the period for which the conference assembled, to arrive at an understanding. The impression was gained that the establishment of the international prize court would not meet with general acceptance so long as vagueness and uncertainty exist as to the principles which the court, in dealing with appeals brought before it, would apply to questions of far-reaching importance affecting naval policy and practice.

His Majesty's Government therefore propose that another conference should assemble during the autumn of the present year, with the object of arriving at an agreement as to what are the generally recognized principles of international law, within the meaning of paragraph 2 of article 7 of the draft convention, as to those matters wherein the practice of nations has varied and of then formulating the rules which, in the absence of special treaty provisions applicable to a particular case, the court should observe in dealing with appeals brought before it for decision.

The rules by which appeals from national prize courts would be decided affect the rights of belligerents in a manner which is far more serious to the principal naval powers than to others, and His Majesty's Government are therefore communicating only with the Governments of Austria-Hungary, France, Germany, Italy, Japan, Russia, Spain, and the United States of America. They would propose that the conference should assemble in October and, if it is agreeable to the Governments of those countries, they would suggest that it should meet in London.

The questions upon which His Majesty's Government consider it to be of the greatest importance that an understanding should be reached are those as to which divergent rules and principles have been enforced in the prize courts of different nations. It is therefore suggested that the following questions should constitute the program of the conference:

(*a*) Contraband, including the circumstances under which particular articles can be considered as contraband; the penalties for their carriage; the immunity of a ship from search when under convoy; and the rules with regard to compensation where vessels have been seized, but have been found in fact only to be carrying innocent cargo:

(*b*) Blockade, including the questions as to the locality where seizure can be effected, and the notice that is necessary before a ship can be seized;

(*c*) The doctrine of continuous voyage in respect both of contraband and of blockade;

(*d*) The legality of the destruction of neutral vessels prior to their condemnation by a prize court;

(*e*) The rules as to neutral ships or persons rendering "unneutral service" ("assistance hostile");

(*f*) The legality of the conversion of a merchant vessel into a warship on the high seas;

(*g*) The rules as to the transfer of merchant vessels from a belligerent to a neutral flag during or in contemplation of hostilities;

(*h*) The question whether the nationality or the domicile of the owner should be adopted as the dominant factor in deciding whether property is enemy property.

His Majesty's Government are deeply sensible of the great advantage which would arise from the establishment of an international prize court, but in view of the serious divergences that the discussion at The Hague brought to light as to many of the above topics after an agreement had practically been reached on the proposals for the creation of such a court, it would be difficult, if not impossible, for His Majesty's Government to carry the legislation necessary to give effect to the convention unless they could assure both Houses of the British Parliament that some more definite understanding had been reached as to the rules by which the new tribunal should be governed.

If the program outlined above is concurred in by the Governments to which it has been submitted, it would be convenient if, on some subsequent date, as for instance the 1st August, the Governments were to interchange memoranda setting out concisely what they regard as the correct rule of international law on each of the above points, together with the authorities on which that view is based. This course would greatly facilitate the work of the conference, and materially shorten its labors.

My Government instruct me to address a communication in this sense to the United States Government, expressing at the same time the hope that if that Government are favorable to the idea of the conference being held, they will send a delegate furnished with full powers to negotiate and conclude an agreement.

I have the honor to be, with the highest consideration, sir,

Your most obedient, humble servant,

JAMES BRYCE.

INSTRUCTIONS TO THE AMERICAN DELEGATES TO THE CONFERENCE AT LONDON TO FORMULATE RULES TO BE OBSERVED BY THE INTERNATIONAL PRIZE COURT.

Messrs. CHARLES H. STOCKTON AND GEORGE G. WILSON.

GENTLEMEN: You have been appointed delegates plenipotentiaries to represent the United States at the conference to be held at London on December 1, 1908, to formulate rules to be observed by the international prize court.

Article 7 of the convention relative to the creation of an international prize court, signed at The Hague, October 18, 1907, provides that—

> If a question of law to be decided is covered by a treaty in force between the belligerent captor and a power which is itself or whose subject or citizen is a party to the proceedings, the court is governed by the provisions of the said treaty.
>
> In the absence of such provisions, the court shall apply the rules of international law. If no generally recognized rule exists, the court shall give judgment in accordance with the general principles of justice and equity.
>
> The above provisions apply equally to questions relating to the order and mode of proof.
>
> If, in accordance with articles 3, 2, *c*, the ground of appeal is the violation of an enactment issued by the belligerent captor, the court will enforce the enactment.
>
> The court may disregard failure to comply with the procedure laid down in the enactments of the belligerent captor, when it is of opinion that the consequences of complying therewith are unjust and inequitable.

This article, proposed by the British delegation and adopted by the conference, has proved unsatisfactory to the British Government, which has called a conference of maritime powers in order to determine in advance of the establishment of the court the rules of law to govern its decisions in matters of prize submitted for its determination.

The first paragraph of article 7 is clear and explicit, providing, as it does, that the court is to be governed by the provisions of a treaty in force between the litigating nations covering the question of law involved.

The first sentence of the second paragraph of the seventh article provides that in the absence of treaties between litigating parties "the court shall apply the rules of international law." If the rules of international law relating to prize were codified and accepted as an authoritative statement of the law of prize, the questions presented to the court for its determination would be decided with reference to a code of laws equally binding upon the signatory powers. In as far as the law of prize has been codified the provision in question is clear and definite. The absence of a general agreement upon the rules of international law is recognized in the concluding sentence of the paragraph under consideration, which provides that "if no generally recognized rule exists, the court shall give judgment in accordance with the general principles of justice and equity." This provision of the article has given rise to great discussion and dissatisfaction, because wide divergence of view exists as to the law properly applicable in such case. For example, in Anglo-American jurisprudence the laws of contraband and blockade constitute a system recognized generally as the Anglo-American system, whereas the laws of contraband and blockade definitely understood on the Continent are applied in the continental as distinguished from the Anglo-American sense. As, therefore, it can not be said that there is any general rule regulating the subject, as the partisans of each system judge and determine for themselves each case as it arises, it necessarily follows that the court would be obliged to determine which system is considered as more conformable "with the general principles of justice and equity."

In its note of March 27, 1908, inviting a conference, the British Government stated that—

The discussions which took place at The Hague during the recent conference showed that on various questions connected with maritime war divergent views and practices prevailed among the nations of the world. Upon some of these subjects an agreement was reached, but on others it was not found possible, within the period for which the conference assembled, to arrive at an understanding. The impression was gained that the establishment of the international prize court would not meet with general acceptance so long as vagueness and uncertainty exist as to the principles which the court, in dealing with appeals brought before it, would apply to questions of far-reaching importance affecting naval policy and practice.

The subjects upon which an agreement was considered indispensable by the British Government in order to enable the international prize court to perform the high services expected of this establishment were the following:

(*a*) Contraband, including the circumstances under which particular articles can be considered as contraband; the penalties for their carriage; the immunity of a ship from search when under convoy; and the rules with regard to compensation where vessels have been seized, but have been found in fact only to be carrying innocent cargo.

(*b*) Blockade, including the questions as to the locality where seizure can be effected, and the notice that is necessary before a ship can be seized.

(*c*) The doctrine of continuous voyage in respect both of contraband and of blockade.

(*d*) The legality of the destruction of neutral vessels prior to their condemnation by a prize court.

(*e*) The rules as to neutral ships or persons rendering "unneutral service" ("assistance hostile").

(*f*) The legality of the conversion of a merchant vessel into a warship on the high seas.

(*g*) The rules as to the transfer of merchant vessels from a belligerent to a neutral flag during or in contemplation of hostilities.

(*h*) The question whether the nationality or the domicile of the owner should be adopted as the dominant factor in deciding whether property is enemy property.

The importance attached by the British Government to an agreement upon these various subjects enumerated in the program is evidenced by the fact that it is stated in the British note that "it would be difficult, if not impossible, for His Majesty's Government to carry the legislation necessary to give effect to the convention unless they could assure both Houses of the British Parliament that some more definite understanding had been reached as to the rules by which the new tribunal should be governed."

In order to facilitate this agreement the British Government suggested that the governments invited to the conference "interchange memoranda setting out concisely what they regarded as the correct rule of international law on each of the above points, together with the authorities on which that view is based."

In reply to the request of the British Government that memoranda be exchanged I stated that—

The department has given careful consideration to the suggestion that each government invited to the conference prepare and exchange memoranda setting forth its practice in the matters specifically mentioned in the tentative program for the conference submitted in the British embassy's note of March 27.

The attitude of the United States is well known to each of the participating powers, as is their maritime practice to the delegates appointed by the United States. The delegates to the Second Hague Peace Conference were thus instructed by the Secretary of State:

"As to the framing of a convention relative to the customs of maritime warfare, you are referred to the Naval War Code promulgated in General Orders

551 of the Navy Department of June 27, 1900, which has met with general commendation by naval authorities throughout the civilized world, and which in general expresses the views of the United States, subject to a few specific amendments suggested in the volume of international law discussions of the Naval War College of the year 1903, pages 91 to 97. The order putting this code into force was revoked by the Navy Department in 1904, not because of any change of views as to the rules which it contained, but because many of those rules, being imposed upon the forces of the United States by the order, would have put our naval forces at a disadvantage as against the forces of other powers, upon whom the rules were not binding. The whole discussion of these rules contained in the volume to which I have referred is commended to your careful study.

"You will urge upon the peace conference the formulation of international rules for war at sea and will offer the Naval War Code of 1900, with the suggested changes and such further changes as may be made necessary by other agreements reached at the conference, as a tentative formulation of the rules which should be considered."

The attitude of the United States has not changed since the conference, and the relevant portion of the instructions copied for your information are as applicable to the maritime conference as they were to the Second Hague Peace Conference.

I have the honor, therefore, to transmit herewith copies of the Naval War Code of 1900 and of the volume of International Discussions of the Naval War College of the year 1903, containing the amendments to be made to the Naval War Code of 1900, to serve as a basis of discussion in the conference, subject, of course, to amendment, in lieu of the memoranda proposed to be prepared and exchanged by each power invited to the maritime conference.

A like reply was sent in acknowledging the memoranda transmitted to the Department of State by Austria-Hungary, Germany, Japan, Netherlands, Russia, Spain, copies of which you have already received in due course.

As you are familiar with the law, practice, and policy of the United States concerning each of the matters mentioned in the tentative program of the British Government, it does not seem necessary to furnish you precise instructions on each of the points with which the conference will be called to deal. You are, however, provided with a copy of the instructions to the American delegation to The Hague Conference of 1907, and you are directed to guide yourselves in the consideration of any matter discussed at the conference by the general and specific provisions of the instructions relating to maritime warfare and the rights and duties of neutrals. You are accordingly authorized and instructed to present to the conference, as a basis for discussion, the Naval War Code promulgated in General Orders 551 of the Navy Department of June 27, 1900, as modified by the specific amendments suggested in the volume of International Law Discussions of the Naval War College for the year 1903, pages 91–97, and you will endeavor, in your discretion, to secure as far as possible the adoption in conventional form of their provisions.

As the United States has not yet ratified the convention for the establishment of the international prize court, signed at The Hague on October 18, 1907, and as the ratification of the instrument is rendered difficult by reason of objections of a constitutional and internal nature not obtaining in other countries, you will be careful not to assume an attitude or position in the discussions of the conference which may seem to commit the United States to the ratification of the convention for the establishment of the court, or to commit this Government, by an acceptance of the general rules of maritime warfare to be formulated by the conference, to create the international court of prize provided for in the convention signed at The Hague on October 18, 1907.

While taking an active part in the deliberations of the conference and cooperating with the various powers represented in order to render it a success by securing the adoption of a satisfactory code of maritime warfare, you will discuss the questions presented in the light of general theory and practice, without specific reference or application to the proposed international prize court.

The department is, however, desirous that the international court of prize may be established in general accord with the provisions of the convention concluded at The Hague on October 18, 1907, and in order to facilitate its establishment you will propose to the conference an additional article or protocol for the consideration of and eventual acceptance by the conference, by which each signatory of the convention of October 18, 1907, shall possess the option, in accordance with local legislation, either to submit the general question of the rightfulness of any capture to the determination of the international prize court or to permit an appeal from the judgment of a national court in a specific case direct to the international court of prize, as contemplated by the convention of October 18, 1907.

In the view of the department the following draft would be not merely satisfactory, but calculated to remove the objections made to the establishment of the international court of prize:

Any signatory of the convention for the establishment of an international court of prize, signed at The Hague on October 18, 1907, may provide in the act of ratification thereof, that, in lieu of subjecting the judgments of the courts of such signatory powers to review upon appeal by the international court of prize, any prize case to which such signatory is a party shall be subject to examination de novo upon the question of the captor's liability for an alleged illegal capture, and, in the event that the international court of prize finds liability upon such examination de novo, it shall determine and assess the damages to be paid by the country of the captor to the injured party by reason of the illegal capture.

Following the precedents established by international conferences, all your reports and communications to this Government will be made to the Department of State for proper consideration and eventual preservation in the archives. Should you be in doubt at any time regarding the meaning or effect of these instructions, or should you consider at any time that there is occasion for special instructions, you will communicate freely with the Department of State by telegraph.

I am, gentlemen, your obedient servant,

ELIHU ROOT.

DEPARTMENT OF STATE,
Washington, November 21, 1908.

REPORT OF THE DELEGATES OF THE UNITED STATES TO THE INTERNATIONAL NAVAL CONFERENCE HELD AT LONDON, DECEMBER 4, 1908, TO FEBRUARY 26, 1909.

AMERICAN EMBASSY,
London, 2d March, 1909.

The Hon. ROBERT BACON,
Secretary of State.

SIR: We have the honor to inform you that the international naval conference called at London in October, 1908, and later postponed

until December, 1908, assembled at the foreign office in London on December 4, at noon. Sir Edward Grey, secretary of state for foreign affairs, extended welcome to the conference on behalf of Great Britain. The conference then proceeded to organization, electing the Earl of Desart, British plenipotentiary, as president. The following powers were represented in accordance with the invitation given them: Germany, the United States, Austria-Hungary, Spain, France, Great Britain, Italy, Japan, Holland, and Russia.

The conference, after a few plenary meetings, resolved itself into a commission, in order that the topics before it might be considered in a less formal manner. After the topics had received considerable discussion a committee of examination was appointed with a view to reducing the material presented to a definite form for the consideration of the commission. After consideration by the commission the subjects would go to the conference in plenary session for final action. The distinguished French jurist, Monsieur L. Renault, head of the French delegation, was elected the chairman of the commission and of the committee of examination and finally rapporteur général. The call of the conference and the rules adopted for its procedure are appended to this report (Exhibits A and B).

The British Government, in order to facilitate the work of the conference, called for a memorandum of the views of each power as to their practice in matters covered by the subjects named in the call for the conference.

The memoranda thus sent was finally translated into French and arranged together in a Red Book in various ways and under several heads with convenient bases of discussion. This book, a copy of which has been duly forwarded to the department, proved to be of great value, especially in the earlier days of the conference, in crystallizing views and showing points of agreement and variance upon the subjects treated by the conference.

The rules, finally formulated by the conference into a declaration relative to the laws of maritime war, number 64 in all, and cover the subjects, arranged by chapters, of Blockade in Time of War, Contraband of War, Unneutral Service, Destruction of Neutral Prizes, Transfer of Flag, Enemy Character, Convoy, Resistance to Visit and Indemnity.

After the completion of the formulation of the rules above mentioned the conference, considering the difficulties that may arise on account of the constitutional requirements of certain states which might prevent them from becoming parties to The Hague convention for the establishment of the international prize court of appeal, drew up a protocol of closure in which a "voeu" (or wish) was expressed to their several Governments calling attention to the advantage that would arise from the conclusion of an arrangement by which the states affected by such constitutional difficulties could have recourse to the international prize court by presenting each case de novo, without affecting the rights guaranteed by the convention either to private persons or to their Governments. This protocol, with its included "voeu," was the result of continued efforts made by the American delegation at the instance of the Department of State. It was signed by all of the plenipotentiaries present, or by the delegates present who had temporarily taken their places.

The final signing of the declaration and protocol was effected on the 26th February, after which the conference adjourned sine die.

CHAPTER I.—BLOCKADE IN TIME OF WAR.

These rules are definitely understood to have no reference to what has been called "pacific blockade."

The general principles in regard to blockade set forth in the Declaration of Paris, April 16, 1856, which have been interpreted by courts, and are therefore fairly established, are reaffirmed.

The right of the commander of the blockading force to allow or to refuse admission to a blockaded port to neutral public ships, or neutral vessels in distress, is recognized.

The method of establishing and raising a blockade is made more clear. Certain States which had customarily maintained a position which required notification of the existence of blockade at the line of blockade made concessions to those which, like the United States, had stood for the principle of public notification to the Government whose flag the ship flies.

Some States, including the United States, had formerly maintained that the liability for the violation of the blockade continues until the vessel has reached her home port or completed her voyage. With the development of modern commerce there has arisen much difference of opinion as to what constitutes a home port or completion of voyage, and in fact the route of many vessels, such as tramp cargo steamers, is determined by the cargo available at the time, and such a vessel may not return to the port of departure for months. Under these circumstances and with a view to avoiding undue interference with neutral commerce, while at the same time retaining the freedom of action for the belligerent, a rule was drawn up and met with general favor, to the effect that the ship guilty of violation of blockade is liable to seizure so long as it is pursued by a ship of the blockading force within the area of blockading operations known as the "rayon d'action," or before entering a neutral port to complete her voyage.

Confiscation is the general penalty for violation of blockade.

The question receiving the most attention was that of "rayon d'action." Certain States were in favor of a limitation of the "rayon d'action" to a very small area. The American delegation regarded this limitation as opposed to the principles which it should support. The form of regulation finally adopted is as follows:

> Neutral vessels can not be captured for breach of blockade except within the area of operations of the war ships detailed to render the blockade effective.

Statements made by the United States upon the subjects of blockade and area of operations are herewith appended—Annex B and Annex C.

CHAPTER II.—CONTRABAND OF WAR.

The question of contraband involved many difficulties which can be readily understood when the various memoranda submitted by the powers on that subject are consulted. It is to the credit of the conference as a whole, and of its delegates singly, that an agreement, satisfactory from so many different points of view, was reached. These rules are more in harmony with modern conditions than those formerly existing, and lighten the burden of neutrals in war time without sacrificing belligerent rights.

The conference adheres to the old nomenclature of absolute and conditional contraband, adding, however, a free list of articles which can not be considered contraband of war.

The first list—that of absolute contraband—is the one virtually agreed upon at The Hague, which, to prevent prolonged discussion and in accordance with instructions from the department, was accepted as a whole by the American delegation. Item No. 7, concerning horses, etc., was found objectionable by one delegation, and if an amendment had been allowed to the list, their objection would have been supported by the American delegation, as horses, mules, etc., in the United States could be considered as conditional contraband. In European countries, however, liable as their inhabitants are to forced requisitions for horses, etc., they may be logically considered as absolute contraband. The list as adopted omits many articles named in the various memoranda, such as canned provisions, sulphur, saltpeter, and other materials used in the fabrication of explosives, which, if included, would have been prejudicial to the United States, and also omits cotton, which under one memorandum might easily have been included.

The second list of contraband—that of conditional contraband—depends for determination of character upon the destination, whether for peaceful or warlike purposes.

If by changes in warfare other materials outside of the free list become adapted to the uses of war, they can be added to the lists of absolute or conditional contraband by means of a published notification to the other powers either before or after the opening of hostilities.

The free list consists of 17 groups of articles, as follows:

1. Raw cotton, wool, silk, jute, flax, hemp, and other raw materials of the textile industries, and yarns of the same.
2. Oil seeds and nuts; copra.
3. Rubber, resins, gums, and lacs; hops.
4. Raw hides and horns, bones, and ivory.
5. Natural and artificial manures, including nitrates and phosphates for agricultural purposes.
6. Metallic ores.
7. Earth, clays, lime, chalk, stone, including marble, bricks, slates, and tiles.
8. Chinaware and glass.
9. Paper and paper-making materials.
10. Soap, paint, including articles exclusively used in their manufacture, and varnish.
11. Bleaching powder, soda ash, caustic soda, salt cake, ammonia, sulphate of ammonia, and sulphate of copper.
12. Agricultural, mining, textile, and printing machinery.
13. Precious and semiprecious stones, pearls, mother-of-pearl, and corals.
14. Clocks and watches, other than chronometers.
15. Fashion and fancy goods.
16. Feathers of all kinds, hairs, and bristles.
17. Household furniture; office furniture and requirements.

The establishment of this list is of great benefit to the sea-borne foreign trade of all countries, and especially to that of the United States, whose exports and imports would be greatly affected by any uncertainty regarding cotton, wool, silk, jute, flax, cotton seed, rubber, hides, fertilizers, metallic ores, paper and paper-making materials, chemicals, agricultural and other machinery, clocks and watches, furniture, etc. Drugs and medicines, and material for the sick and wounded, are included among those not contraband of war, but can be requisitioned with compensation for the needs of the sick and wounded of the captor.

The doctrine of continuous voyage is retained with respect to absolute contraband and well defined in article 30. The doctrine of continuous voyage in any form has heretofore been considered as nonexistent by several European powers, and it was a very considerable concession upon their part to accept it as applied to absolute contraband. On our part, in giving up continuous voyage as applied to conditional contraband and blockade we gave up a belligerent right now regarded as of little value. The articles of conditional contraband carried by neutral carriers would be bulky and difficult to trace when bound for the common stock of a neutral country. Not being earmarked, they would be most difficult of seizure when afloat. They would be, as a rule, matters of export by us as neutrals, and would be such materials as foodstuffs, oats, hay, railway materials, coal, oil, barbed wire, horseshoes, etc. It is unnecessary to say that to free such articles from the fetters of the continuous-voyage doctrine would be of great service to our trade during war in which the United States is a neutral.

Much relief is afforded to neutrals in respect to the penalty of carrying contraband. In the first place, the ship is not subject to confiscation unless more than half of the cargo is contraband, to be determined either by weight, volume, value, or freight value.

A rule was adopted that a ship seized for carrying contraband, although not itself liable to confiscation because the proportion of contraband was below one-half, could be authorized to proceed according to circumstances if the captain was ready to deliver the contraband articles to the belligerent man-of-war. The captor in such a case has the option of destroying the contraband which is thus delivered to him. This procedure is one of value, as it saves from capture and detention a neutral liner filled with passengers, mails, and valuable freight, which might have a small amount of contraband known or unknown to its captain and owner. This procedure is also in conformity with many treaties made by the United States, dating from 1783 to 1864. It avoids vexatious seizure of neutral vessels—bad enough in the times of small vessels, but intolerable with the great liners of to-day.

Chapter III.—Unneutral Service.

Certain acts, to which, by forced interpretation, the doctrines of contraband or of blockade had at times been extended, are recognized as differing both in nature and in penalty from contraband and blockade. Thus much confusion is avoided in time of war upon the sea. Penalty of confiscation of ship for transport of troops and dispatches for the belligerent, and for cooperation in assisting the enemy, is provided, and in general, penalties are as for carriage of contraband. The penalty of confiscation and treatment as an enemy ship is provided for a ship taking direct part in hostilities, under orders of the belligerent, wholly loaded by the enemy government or when exclusively used in transport service of the enemy.

The aim of article 48 is to justify the taking of an officer incorporated in the armed forces from a ship without bringing the ship, if it be a large vessel, into port for adjudication, and also to allow the arrest of an officer or officers of high rank who, in disguise or incognito and unknown to the captain of the vessel, are on board of a neutral liner. In this case a want of knowledge on the part of the proper

authorities of the vessel might readily clear the vessel from any taint and show there was no proper reason for sending in the ship, but the right to take the prisoner seems important. The least objectionable action would be to take the enemy officer, but allow the ship to proceed.

CHAPTER IV.—DESTRUCTION OF NEUTRAL PRIZES.

This question was considered very fully and frankly by the conference. Views at first thought to be widely divergent were found to be similar in many respects. While some proclaimed the right to destroy neutral prizes, no one admitted that this could be done except for grave reasons. While some denied the right to destroy, all were inclined to admit that there might be exceptional circumstances under which destruction must be permitted.

All admitted that in general a neutral prize ought not to be destroyed, but should be taken to a prize court; but under exceptional circumstances a vessel otherwise liable to confiscation might be destroyed, though it would be necessary to care for persons and papers on board.

Necessity for destruction must be first established, and the further fact that the vessel would in any case be liable to confiscation must also be established, though if the necessity for destruction is not established, the liability of the state of the destroying vessel to pay indemnity is recognized whether or not the neutral vessel is guilty. The owner of neutral merchandise on board which is not liable to confiscation is also entitled to indemnity. Thus restraint commensurate with the gravity of the act is provided. A belligerent commander destroying a neutral vessel puts his government under grave responsibilities, which are here recognized. The conclusion set forth in these rules seems to be in accord with the doctrine of the United States.

CHAPTER V.—TRANSFER OF FLAG.

The subject of transfer of flag of a ship in consequence of sale in anticipation of or during war was the subject of frequent and prolonged discussion. A private ship of the enemy would be liable to capture in time of war, while the ship of a neutral would be free. It is natural, therefore, that the owners of ships which would be liable to capture in time of war should desire to avoid this liability by selling the ships to a neutral and placing them under a free flag. At the same time a belligerent does not wish to be deprived of the opportunity to attack ships which are really enemy ships, though they may be for the time flying a neutral flag. Thus there arises in time of war the conflict between the right of the neutral to trade with one belligerent and the right of the other belligerent to interfere with belligerent commerce.

It has been decided that commerce in ships in time of war is, in general, not legitimate unless it is bona fide commerce and not undertaken to evade the consequences to which the ship would be liable if it retained the enemy flag. The burden of proof of validity of the transfer is placed on the vendor. In all such cases commerce would be regarded as illegitimate when the transfer is made (1) in transitu or in a blockaded port, (2) with the right of repurchase or return, or (3) contrary to the laws of the flag whieh it bears.

It would also be possible, and to some extent has been the practice, for shipowners anticipating war to make transfers just before the outbreak of war. Such transfers, when made with the view to evading the consequences of the war and not as commercial transactions, are not regarded as legitimate, but the burden of proof rests upon the captor, except when the papers in regard to the transfer, which has been made within 60 days before the outbreak of war, are not on board. In this exceptional case the burden of proof of the validity of the transfer is placed on the vessel, as there is not sufficient evidence at hand in the ship's papers to enable the captor to release the ship.

It would, however, be an undue interference with commerce if all sales or sales made a long time before the war were liable to be regarded as invalid. It is therefore decided that sales made more than 30 days before the war, even though made with the idea of evading the consequences of a war which might subsequently break out, would be valid unless there is some irregularity in the transfer itself, or unless it is not an actual transfer, evidence of which might be in the fact that the profits and control remain in the same hands as before the sale.

There are thus established three periods under which transfer of flag is considered, (1) during war, when burden of proof of the validity of the transfer rests upon the vender; (2) a period of 30 days before the war, during which it is necessary for the captor to prove that the transfer is made to evade the consequences of war; and (3) the period prior to 30 days, when, regardless of whether or not the transfer is made to escape the consequences of war, it is necessary for the captor to establish that the transfer itself is irregular, or not in fact a transfer. It is also necessary that in order to have advantages of these provisions, a vessel transferred within 60 days before the war shall have the papers relating to the sale on board.

These provisions establish much more definite rules, where formerly there had been great diversity of practice among States, or even diversity in the same State at different periods. Commerce in ships is recognized as legitimate under such restrictions as seem necessary in order to safeguard belligerent rights.

The attitude of the American delegation is shown in the "Exposé" (Annex 00) appended. The American delegation advocated the adoption of a rule to the following effect:

> A transfer effected before the outbreak of war is valid if it is absolute, complete, bona fide, and conforms to the legislation of the States interested, and if it has for its effect that neither the control of the ship, nor the profits arising from its use, remain longer in the same hands as before the transfer.
>
> If the captor can establish that the above conditions have not been fulfilled, the transfer is presumed to have intervened with the intention to evade the consequences of war, and is null.

This rule, practically as above, was adopted.

The American delegation also advocated the placing of a definite limit to the period during which transfers made before the war could be questioned, and such a provision was finally adopted by the conference.

Thus the rights of belligerents and of neutrals are defined and safeguarded.

CHAPTER VI.—ENEMY CHARACTER.

The consideration of this topic was intrusted to a "comité juridique" consisting of one member from each delegation. The States represented at the conference were found to be equally divided, five favoring the principle of domicile of the proprietor as the criterion of character of goods found on an enemy vessel and five favoring nationality. After many meetings, it was found impossible to reach an agreement, and this question was left open, the rule stating that—

The neutral or enemy character of merchandise found on board an enemy ship is determined by the neutral or enemy character of its proprietor.

What principle should decide the neutral or enemy character of the proprietor is not determined.

The other rules in regard to enemy character in the main formulate existing practice.

CHAPTER VII.—CONVOY.

Great Britain formerly refused to admit the right of convoy of neutral merchant vessels by neutral ships of war. In a spirit of conciliation that Government receded from its former position and admitted the right of convoy. There remained then only the determination of the method of its exercise. The American delegation steadily maintained that as the effect of convoy was in the main to remove the vessels under escort from the belligerent right of visit and search, the convoying officer should assume the responsibility for the vessels under his control. Naturally a war vessel of a belligerent approaching a convoy would be entitled to obtain the information in regard to the vessels under convoy that it would obtain from an actual visit to the vessels if they were not under convoy. The officer in command of the public vessel convoying the merchant vessels should be prepared to furnish this information. The commander of the vessel of the belligerent may have reason to believe that the convoying officer has been deceived, and in such case may properly request that his suspicions be considered. The convoying officer should investigate, and may if he desires allow an officer from the belligerent vessel to share the investigation, and should inform the commander of the belligerent of the results of his investigation.

If the commander of the convoy finds that a vessel to which he has given escort is, in his opinion, violating his good faith, he ought to withdraw his protection. Such a vessel has forfeited its right to protection, and, in justice both to other neutrals and the belligerent, ought to be liable for the consequences.

This rule was drawn with view to affording the greatest convenience and service to neutrals, without depriving belligerents of proper war rights. In spirit it accords with both American doctrine and treaties.

CHAPTER VIII.—RESISTANCE TO VISIT AND SEARCH.

A general accord was found in the opinion upon this subject, and the following rule was adopted:

Resistance by force to the legitimate exercise of the right of visit, search, or seizure renders the vessel in all cases liable to confiscation. The cargo is liable

to the same treatment as the cargo of an enemy ship. The merchandise belonging to the captain or to the owners of the ship is regarded as enemy merchandise.

CHAPTER IX.—INDEMNITY FOR SEIZURE.

It has been recognized by prize courts that in cases of unjust seizure the vessel seized should receive indemnity for the loss, inconvenience, and delay which it has suffered. It is also recognized that the vessel while innocent may appear to be guilty, and that the captor has a right to demand that the vessel be clearly innocent. This would not be the case if the papers were irregular, if the vessel were far out of its course and near a blockaded port, or otherwise evidently open to suspicion. Such grounds might justify the belligerent in taking the vessel to a prize court, but might not justify condemnation by the court.

That the rights of both belligerents and neutrals might be secured a rule in accord with general practice was formulated to the effect that when the seizure of a ship or merchandise is declared null by the prize court, or if, without being brought to judgment, the seizure of the vessel is not sustained, the persons interested have a right to indemnity unless there have been sufficient reasons for the seizure of ship or merchandise.

CONCLUSION.

In closing this report, the American delegation to the International Naval Conference desires to state that the declaration adopted by the conference, defining the relations between belligerents and belligerents, and between belligerents and neutrals, will, without interfering with legitimate belligerent or neutral action, remove many of the reasons for international friction and misunderstanding, which until the present time have frequently existed. Ten powers have reached an agreement upon matters which, if left to divergent practice, and solely to national prejudice, would have made some of the earnest hopes of the conferences at The Hague and the desires often expressed by the United States Government impossible of realization.

We desire to recognize the uniform courtesy and hospitality of the British Government, and we specially desire to express our appreciation of the great assistance rendered to us in many ways by the American ambassador in London, and by the various members of the embassy staff.

We have the honor to be, sir,

Your obedient servants,

C. H. STOCKTON,
GEORGE GRAFTON WILSON,
Delegates Plenipotentiary to the International Naval Conference.
ELLERY C. STOWELL,
Secretary of the Delegation.

EXHIBIT A.—*Call of conference by Great Britain.*

[Printed ante, p. 64.]

EXHIBIT B.—*Rules of procedure.*

1. Plenipotentiary and nonplenipotentiary delegates have equally the right of speaking in the discussions of the conference.
2. Secretaries of the delegations may accompany the members of their delegation at all the sessions of the conference.
3. The sessions of the conference are not public. Its deliberations remain strictly confidential.
4. The French language is recognized as the official language for the deliberations and acts of the conference. Speeches delivered in another language are given orally in outline in French.

EXHIBIT C.—*Statement of the delegation of the United States of America regarding the "radius of action."*

The American delegation accepts in principle basis No. 24 with the reservation that the belligerent or the officer in command of the blockading force shall have the right to fix the length of the radius of action which, according to our desire, should not exceed 1,000 miles. The radius of action or zone of operation should be defined, immediately upon the declaration of blockade, by the officer in command of the blockading force, in conformity with article 18. The American delegation does not wish to impose upon belligerents set rules as to the length of radius of action, but simply to ask the right to fix a maximum of 1,000 miles when circumstances so demand. The delegation concurs in the remarks of Rear Admiral Le Bris regarding the nature of the radius of action to vary with geographical conditions, the propinquity of neutral ports and interests of neutral commerce, as well as with the force employed.

By determining the area of the zone of operation the delegation intends to ask that the force employed be proportionate to the zone. No country has been more steadfast than the United States in its opposition to paper blockades and it holds that the force charged with the duty of enforcing the blockade must be proportionate to the zone affected thereby.

The delegation adds, in explanation of the wide expanse of the desired radius of action, that the demand rests on the ground that blockade running is becoming more and more a night operation and that it is difficult to capture a vessel before daybreak after it has put to sea. The final chase and capture take place where, properly speaking, the outer line of the blockading force is stationed. The distance of that line varies with the length of night darkness which may reach 16 hours, and the speed of the vessels, which may reach 30 knots. The distance may thus represent a zone of 480 miles, and even more if the inner line be very far from the entrance of the port.

EXHIBIT D.—*Statement of the delegation of the United States regarding the pursuit of ships in cases of blockade running.*

As regards article 25, the delegation, while believing that the article could advantageously be combined with article 24 so as to deal with the question of blockade as a whole, accepts the article under the

reservation that pursuit is considered as continuous and not abandoned, in the meaning of the article, even though it should be abandoned by one line of the blockading force to be resumed after a while by a ship of the second line until the limit of the radius of action shall have been reached. Under certain conditions there may even be several lines, each one with its respective pursuit zones.

EXHIBIT E.

The American delegation regrets that it finds it necessary to make a reservation on article 1 of the rules relative to the transfer of the flag. It holds that a rule which reads—

> The transfer of a hostile vessel to a neutral flag, effected before the opening of hostilities, is valid unless it should be established that the transfer was effected with a view to eluding the consequences that go with the character of a hostile vessel—

does not agree with the spirit of the modern rules concerning war, adopted at The Hague, whose object is—

> to guarantee the safety of international commerce from the fortunes of war and wishing, in accordance with modern practice, to protect as far as possible transactions entered into in good faith and in progress before the opening of hostilities.

Neither does it agree with the principle which would restrict the effects of war to the duration of hostilities.

The rule as proposed seems to aim at depriving business men of the legitimate advantages of their foresight. It does not say how long the vessel shall be held in possession before the opening of hostilities whereby ocean commerce, lawful per se, would be protected against the disadvantages of a seizure.

It must be granted that a merchant may in time of peace endeavor, by a sale of his property of whatever nature, to protect himself from certain consequences flowing from the opening of hostilities. This may apply to a ship as well as to any other form of property.

The proposed rule would have a boundless retroactive effect.

The main object of a rule concerning a transfer of the flag before the opening of hostilities is to preclude transfers that are not bona fide commercial transactions.

It seems to the American delegation that this object could be achieved by adopting some rule, as the following:

> A transfer effected before the beginning of the war is valid if absolute, complete, in good faith, and in accordance with the law of the countries concerned, and if its effect is that neither the disposal of the ship nor the profit derived from its use remains in the same hands as before the transfer.
>
> If the captor can prove that the above-mentioned conditions have not been fulfilled, the transfer shall be presumed to have been interposed with the intent of eluding the consequences of war and shall be void.

OPINION OF SOLICITOR OF STATE DEPARTMENT.

SOLICITOR'S OFFICE, STATE DEPARTMENT,
August 7, 1914.

THE TRANSFER OF MERCHANT SHIPS OF A BELLIGERENT TO A NEUTRAL AFTER THE OUTBREAK OF WAR.

CONCLUSIONS FROM THE MEMORANDUM ATTACHED.

1. Merchant ships of a belligerent may be transferred to a neutral after the outbreak of hostilities.
2. If the sale of the ship is made in good faith, without defeasance or reservation of title or interest in the vendor, without any understanding, expressed or tacit, that the vessel is to be retransferred after hostilities and without the indicia or badges of a collusive or colorable transaction.
3. But transfer can not be made of such vessel in a blockaded port or while in transitu.
4. The transfer must be allowable under and in conformity to the municipal regulations of the country of the neutral purchaser.
5. The declaration of the London convention that transfers of an enemy vessel to a neutral during war will not be valid unless it be shown that the same was not made to evade the consequences to which an enemy vessel, as such, is exposed, if it were controlling of the question, relates only to the good faith of the transfer and not to the ulterior motive of the parties to reap the natural advantages to flow from the operation of the vessel under the flag of a country not at war, while it inverts the burden of proof of the good faith of the transaction.

THE RIGHT OF NEUTRALS TO PURCHASE MERCHANT SHIPS FROM BELLIGERENTS IN TIME OF WAR.

INTRODUCTORY.

The right of neutrals to purchase merchant ships from belligerents in time of war is based upon, and is indeed part of, the right of neutrals to continue in time of war to trade with belligerents, which right is undoubted, subject to certain exceptions, relating principally to contraband and blockade. This right to trade with belligerents is of universal recognition, although on occasions it has been denied in practice. During the Napoleonic wars the French and British Governments assumed to dictate the trade in which neutrals should be permitted to engage with the belligerents and to prohibit them from trading with belligerents altogether. But these de-

crees met with the firmest resistance on the part of the American Government at the time, and after the occasions which produced them had passed the English Government was compelled to reprobate and abandon them. The commerce of neutrals should not be interrupted by the exigencies of war. The right of the citizens of a neutral country to trade in merchant vessels belonging to the citizens of a belligerent, with certain well-defined exceptions, may be said to be of well-nigh universal admission.

THE POSITION OF THE UNITED STATES.

The position of the United States on this question is historical, and, so far as my investigation has extended, has been uniform. This position may be stated as follows:

A neutral has a perfect right to purchase the merchant vessels of belligerents during a state of war when such purchase is bona fide, without defeasance, reservation of title or interest, and intended to convey perfect and permanent title to the purchaser. This rule is subject to certain exceptions herein noted.

PRECEDENTS.

I shall now recite some of the precedents illustrating the position uniformly maintained by the United States:

1. February 19, 1856, Secretary of State Marcy to Mr. Mason:

> The principle, therefore, that a neutral has a perfect right to purchase the merchant vessels of a belligerent has been maintained by England, by Russia, and by the United States; and it is inconsistent with these historical facts to say that the contrary doctrine avowed by France has had the sanction of the chief maritime nations, or that it forms part of the whole doctrine of maritime law. (Misc. Inst., France, Vol. XV, 321; see 11th Waits State Papers, 203.)

(The position thus stated by Secretary Marcy is undoubtedly in harmony with the general English rule, but has been contested by France, where, under governmental regulations, enemy-built vessels can not be made neutral by a sale to a neutral after hostilities begin. It is also claimed that the position of Russia is in line with the French contention. But it appears that the position of Russia is correctly stated by Secretary Marcy, supra.)

Secretary of State Cass to United States consuls (Circular No. 10, June 1, 1859):

> Inquiries having been addressed to the department as to the right of a citizen of the United States to purchase the vessel of a belligerent during the present war in Europe, I have to inform you that a similar question arose during the late Crimean War, and was deliberately and carefully investigated by the administration for the time being and resulted in the conviction that a vessel so purchased in good faith, becomes the property of the purchaser and is entitled to the protection of the flag of the United States, though a special act of Congress would be necessary to enable her to obtain and register from the proper department. These views are entirely concurred in by the existing Executive Government of the United States, and will be maintained whenever there may be occasion therefor.

To the same effect, Secretary Cass to Mr. Mason, June 20, 1859 (30 MS. Dom. Let., 414); and Secretary Cass to Mr. Gittings, June 24, 1859 (30 Dom. Let., 429).

The regulations referred to, supra, pointed out that the purchase, in order to be valid, must be in good faith and not a simulated pur-

chase of vessels to be employed in hostile operations against countries with which the United States are at peace. In this connection it is safe to say that where there has been merely an outward transfer of title, as when the original owner is left in command and direction of the vessel, and the same is continued in identically the same service or trade, especially where the original owner retains, though secretly, an interest in the vessel or its operation, the sale would be treated as a mere subterfuge to screen the vessel from capture by one of the belligerents, and in such case the ostensible owner would not be entitled to the protection accorded to a vessel flying the flag of the neutral country. (Under this, see Mr. Fish, Secretary of State, to Mr. Marsh, Jan. 29, 1877, MS. Inst., to Chile, Vol. II, p. 11.)

Boutwell, Secretary of the Treasury, to Mr. Washburne, minister to France, May 23, 1871, and sent to the Secretary of State at same time (see MS. Misc. Let.):

2. "Can a foreign vessel be purchased by a citizen of the United States?"

In reply I have to observe that the natural right to acquire property by purchase has been held by high authority to be unaffected, so far as neutrals are concerned, by the mere fact that a state of war exists between two or more powers, from the citizens or subjects of one of which the purchase is made. Such right is subject, however, to the restrictions imposed by international law, by treaty, or by the belligerent powers respectively as to the property of their own citizens or subjects during the existence of such war. This principle is stated by one of the former Attorneys General of the United States as follows: "A state of war interrupts no contract of purchase and sale, or of transportation, as between neutral and belligerent, except in articles contraband of war."

3. The opinion of the Attorney General referred to was that of Mr. Cushing in 1854 (6 Op. Atty. Gen., p. 638, and 1855, 7 Op. Atty. Gen., p. 538), wherein the Attorney General said:

A citizen of the United States may purchase a ship of a belligerent power, at home or abroad, in a belligerent port or on the high seas, provided the purchase be made bona fide and the property be passed absolutely and without reserve; and the ship so purchased becomes entitled to bear the flag and receive the protection of the United States.

4. On June 20, 1879 (Foreign Relations, 1879, p. 884), Secretary of State Evarts to Mr. Christiancy, minister to Peru, affirmed the general doctrine as above stated, but pointed out the temptations to the abuse of the right and the great danger from inconsiderate action on the part of United States consuls in facilitating such transfers, but stated that, "although the validity of the transfer may in the end be judicially inquired into, much harm might result from a simulated sale before a final decision on the subject could be reached; still the possible abuse of power by a sale is not a sufficient reason for abrogating the power, especially if Congress should abstain from forbidding the purchase and use abroad of foreign-built ships by American citizens."

In a letter to Minister Christiancy, December 26, 1879 (Foreign Relations, 1879, p. 894), and in a similar instruction to the minister to Chile, Secretary Evarts again stated, amongst other things, that—

The right of Americans to buy foreign-built vessels and to carry on commerce with them is clear and undoubted * * *. As a consequence an adjunct of this right, that of flying the American flag, can not be prohibited. If circumstances justify on the part of the consular officers an opinion that the sale is honest, and that the vessel has really become the property of a citizen of the United States, she may properly

fly the flag of the owner's country as an indication of such ownership and as an emblem of the owner's nationality.

(In this connection he said that a ship so transferred, but not registered as an American vessel, was not entitled to the immunities and thorough protection accorded to registered American vessels plying between ports of the United States and those of foreign countries; that American owners domiciled abroad and engaged in business of that sort take upon themselves the risks to such traffic, and that if seized by one of the belligerents they have no right of diplomatic protection other than that they should be accorded fair treatment in prize courts.)

5. In reply to request for sanction of a proposed transfer of an enemy vessel to a neutral in a blockaded Cuban port in 1898 the department said, through Assistant Secretary Moore, that it would not give such desired permission or any privilege to the transfer from a belligerent to a neutral of a vessel in a blockaded port. (Mr. Moore, to Messrs. Butler et al., May 10, 1898, 228 Dom. Let., 378.)

(The refusal of this request was evidently based upon the fact that the vessel intended to be transferred was at the time in a blockaded port of the Cuban Government. It will be seen that this forms an exception to the general rule as hereinbefore stated.)

6. In this same connection the case of the *Benito Estenger* (176 U. S., 568) is valuable as illustrating the general principle stated. In that case Chief Justice Fuller said:

> Transfer of vessels flagrante bello were originally held invalid, but the rule has been modified and is thus given by Mr. Hall, who, stating that in France their sale is forbidden, and are declared to be prize in all cases in which they have been transferred to neutrals after the buyers could have knowledge of the outbreak of war, says: "In England and the United States the right to purchase vessels is in principle admitted, they being in themselves legitimate objects of trade as fully as any other kind of merchandise, but the practice of fraud being great, the circumstances attending a sale are severely scrutinized and the transfer is not held to be good if it is subjected to any condition or tacit understanding by which the vendor keeps an interest in the vessel or its profits, control over it, and power of revocation, or a right to its restoration at the conclusion of war."

He cites Justice Story on Principles and Practice of Prize Courts, who states:

> In respect to the transfer of enemy's ships during war, it is certain that purchases of them by neutrals are not in general illegal; but are liable to great suspicions; and if good proof be not given of their validity by bill of sale and payment of a reasonable consideration, it will materially impair the validity of a neutral claim; and if after such transfer the ship be employed habitually in the enemy's trade or under the management of a hostile proprietor, the sale will be deemed merely colorable and collusive.

(The Chief Justice cites several English cases which are valuable on the question of fraudulent and colorable transfers.)

7. The Russian Prize Regulations of March 27, 1895, section 7 (Foreign Relations, 1904, p. 736), prescribe that merchant vessels acquired from the hostile power or its subjects by persons of neutral nationality are acknowledged to be hostile vessels unless it is proven that the acquisition must be considered, according to the laws of the nation to whom the purchaser belongs, as having actually taken place before the purchaser received news of the declaration of war, or that the vessels acquired in the manner mentioned, although after the receipt of such news, were acquired conscientiously and not for the purpose of covering hostile property.

8. I find no citation of any American precedent or authority which denounces the general doctrine of the right of a neutral to purchase the vessel of a belligerent in time of war, where such purchase is made in good faith and is not subject to the charge that it was colorable or collusive only.

AUTHORITIES ON INTERNATIONAL LAW.

1. Oppenheim's International Law (p. 206), discussing this question, says:

Since many vessels are liable to capture, the question must be taken into consideration whether the fact that an enemy vessel has been sold during war to a subject of a neutral or to a subject of the belligerent state whose forces seized her, has the effect of excluding her appropriation. It is obvious that if the question is answered in the affirmative, the owners of enemy vessels can evade the danger of having their property captured by selling their vessels. There is no general rule of international law which answered this question. The rule ought to be that, since commerce between belligerent subjects and neutral subjects is not at all prohibited through the outbreak of war, a bona fide sale of enemy property should have the effect of freeing such vessels from appropriation, as they are in fact no longer enemy property. But the practice among the states varies. Thus France does not recognize any such sale after the outbreak of war. On the other hand the practice of Great Britain and the United States of America recognizes such sales, provided they are made bona fide and the new owner has actually taken possession of the sold vessel. If the sale was contracted in transitu, the vessel having started her voyage as an enemy vessel, the sale is not recognized, when the vessel is detained on her voyage before the new owner has taken actual possession of her.

(The attempted sale of a vessel in transitu seems to form another exception to the rule permitting the sale of enemy vessels to neutrals. This and the other exception of an attempted sale of an enemy vessel in a blockaded port appear to constitute the two principal exceptions.)

2. Halleck's International Law (vol. 2, p. 93), discussing the subject, says:

The transfer, in time of war, of the vessel of an enemy to a neutral is a transaction, from its very nature, liable to strong suspicion and consequently is examined with a jealous vigilance and subjected to rules of peculiar strictness in the prize court of an opposite belligerent. Nevertheless, neutrals have a right to make such purchases of merchant vessels, when they act with good faith, and the belligerent powers are not justified, by the law of nations, in attempting to prohibit such transfer by a sweeping interdiction, as was done in former years by the French and English Governments. Ordinances of this character form no part of the law of nations, and, consequently, are not binding upon the prize courts, even of the country by which they are issued. Nevertheless, where the sale is claimed to have been made by an enemy to a neutral, in time of war, it is not unreasonable that these motives and terms should be an object of searching inquiry. Hence, courts of admiralty have established severe rules respecting such transfers.

(He states these rules to be in substance: The sale must be absolute and unconditional; the title and interest of the vendor must be completely and absolutely divested; if there is a covenant, agreement, or tacit understanding by which he retains any proof of his interest, the contract is vitiated and in international law is regarded as void. He points out various instances in which a sale would be considered as colorable only.)

3. Fillimore's International Law (vol. 3, p. 735), says:

In respect to the transfers of enemy ships during war, it is certain that purchases of them by neutrals are not in general illegal; but such purchases are liable to great suspicion; and if good proof be not given of their validity by bill of sale and payment of

a reasonable consideration, it will materially impair the validity of the neutral claim; and if the purchase be made by an agent, his letters of procuration must be produced and proved; and if, after such transfer, the ship be employed habitually in the enemy's trade, or under the management of a hostile proprietor, the sale will be deemed merely colorable.

He quotes the Privy Council in 1857 as follows:

The general rule is open to no doubt. A neutral, while a war is imminent, or after it has commenced, is at liberty to purchase either goods or ships (not being ships of war) from either belligerent, and the purchase is valid whether the subject of it be lying in a neutral port or in an enemy's port. During a time of peace without prospect of war, any transfer sufficient to transfer the property between the vendor and vendee is good; also against a captor if war afterwards unexpectedly breaks out. But in case of war, either actual or imminent, this rule is subject to qualification, and it is stated that in such case a mere transfer by documents, which would be sufficient to bind the parties, is not sufficient to change the property as against captors as long as the ships or goods remains in transitu.

LONDON CONVENTION OF 1909.

The London convention (which was not ratified by the signatory powers and becomes valuable only as indicative of the disposition of the several Governments) confirms, rather than denies, the position herein maintained:

Article 56 of the convention is as follows:

The transfer of an enemy vessel to a neutral flag affected after the outbreak of hostilities is void unless it is proved that such transfer was not made in order to evade the consequences to which an enemy vessel, as such, is exposed.

Provided that there is an absolute presumption that a transfer is void—

(1) If the transfer has been made during a voyage or in a blockaded port.

(2) If a right to repurchase or recover the vessel is reserved to the vendor.

(3) If the requirements of the municipal law governing the right to fly the flag under which the vessel is sailing have not been fulfilled.

The effect of this article would be merely to change the burden of proof by reversing the presumption of the bona fides of the sale and specifying certain conditions under which the sale would be conclusively presumed to be void. But this article does not change the general rule which I have asserted, to wit, that the sale of a belligerent vessel to a neutral in time of war is valid where such sale is made in good faith and divests all title and interest of the vendor. In this connection the report of the drafting committee of the convention is instructive. Of this article it said:

The rule respecting transfer made after the outbreak of hostilities is more simple. Such a transfer is only valid if it is proved that its object was not to evade the consequences to which the enemy vessel is exposed. The rule accepted in respect to transfers made before the outbreak of hostilities is inverted. In that case there is a presumption that the transfer is valid; in the present that it is void, provided always that proof to the contrary may be given. For instance, it might be proved that the transfer had taken place by inheritance.

In this same connection attention is directed to the report to their Government by the British delegates to the convention respecting the work of the convention. Referring to this article they said:

The provisions respecting transfers made during war are less complicated. The general rule is that such transfers are considered void unless it be proved that they were not made with a view to evade the consequences which the retention of enemy nationality would entail. This is only another way of stating the principle already explained, that transfers effected after the outbreak of hostilities are good if made bona fide, but that it is for the owners of the vessels transferred to prove such bona fides. The provisions under this head are practically in accord with the rules hitherto enforced by British prize courts.

From all of which it will appear that the declaration of the London convention on the question of the transfer of merchant vessels from a belligerent to a neutral flag but restates the position long maintained by the United States, Great Britain, and most of the other maritime nations, except as to the burden of proof of the bona fides of such a transfer made during the existence of war. It is the bona fides of the sale which is the essence of a good transfer, and it is not perceived that the ulterior motive actuating the parties to the transfer is to govern, though such motive may have been the natural advantages in having the ship to fly the flag of a neutral rather than that of a country at war. If the transfer was bona fide, without defeasance or reservation of title or interest, without any understanding that the vessel should be retransferred at the end of hostilities and without other indicia of a simulated or fictitious transfer, and not of a ship in a blockaded port or in transitu, the transfer is valid under international law, as it would be under the London convention, though the ulterior motive of the vendor and vendee may have been the natural advantages of flying the flag of a country at peace.

This memorandum is hurriedly struck off and I have not had time or opportunity to revise it; but it is believed that it correctly presents the status of the question involved.

CONE JOHNSON.

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